Also, affidavit of T. C. Goff, to be filed with the Committee on War Claims in support of the bill just being introduced for the relief of the heirs of Lidda Goff, deceased; to the Committee on War Claims.

By Mr. PUJO: Papers to accompany bill (H. R. 28615) to establish a fish-cultural station in the State of Louisiana; to the Committee on the Merchant Marine and Fisheries.

By Mr. RAKER: Petition of the San Francisco Labor Council, favoring the recognition of China as a Republic; to the Committee on Foreign Affairs.

Also, letter from the California Retail Grocers and Merchants' Association, of San Francisco, Cal., opposing the Oldfield bill; to the Committee on Patents.

Also, telegram from the California State Audubon Society, Los Angeles, Cal., favoring the Weeks-McLean bill, giving Federal protection to migratory birds; to the Committee on Agriculture.

Also, letter from L. M. Davenport & Co., Los Angeles, Cal., and letter from the Klauber-Wangenheim Co., of San Diego, Cal., favoring the Weeks 1-cent postage bill; to the Committee on the Post Office and Post Roads.

By Mr. SCULLY: Petition of the Chamber of Commerce of the United States of America, Washington, D. C., favoring the passage of the Page agricultural and industrial education bill (S. 3); to the Committee on Agriculture.

By Mr. STEPHENS of Texas: Petition of citizens of Hall County, Tex., in behalf of legislation for eradication of the Russian thistle in Texas; to the Committee on Agriculture.

By Mr. TOWNSEND: Petition of the New Jersey Historical Society, to secure suitable housing for the national archives; to the Committee on the Library.

By Mr. WILDER: Petition of Eliot School, Natick, Mass., in favor of law for protection of migratory birds; to the Committee on Agriculture.

Also, petition of Massachusetts citizens, favoring bills for the protection of migratory birds; to the Committee on Agriculture.

SENATE.

WEDNESDAY, *February 5, 1913.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

Mr. BACON took the chair as President pro tempore under the previous order of the Senate.

The Secretary proceeded to read the Journal of yesterday's proceedings when, on request of Mr. SMOOT and by unanimous consent, the further reading was dispensed with and the Journal was approved.

Mr. CHILTON. Mr. President, I rise to a question of personal privilege.

Mr. LA FOLLETTE. If the Senator from West Virginia will yield, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from Wisconsin suggests the absence of a quorum. The Secretary will proceed to call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Culberson	La Follette	Sheppard
Bacon	Cullom	Lodge	Smith, Ariz.
Bankhead	Cummins	McCumber	Smith, Mich.
Borah	Curtis	Martin, Va.	Smoot
Bourne	Dillingham	Martine, N. J.	Stephenson
Brandegee	Fletcher	Nelson	Swanson
Brown	Gallinger	O'Gorman	Thomas
Bryan	Gronna	Oliver	Thornton
Burnham	Guggenheim	Overman	Tillman
Burton	Hitchcock	Page	Townsend
Catron	Johnson, Me.	Paynter	Webb
Chilton	Johnston, Ala.	Perkins	Wetmore
Clapp	Jones	Perky	Works
Clarke, Ark.	Kavanaugh	Poindexter	
Crane	Kenyon	Pomerene	

Mr. THORNTON. I desire to announce the necessary absence of my colleague [Mr. FOSTER] on account of illness in his family, and that he is paired with the junior Senator from Wyoming [Mr. WARREN]. I ask that this announcement may stand for the day.

The PRESIDENT pro tempore. Upon the call of the roll of the Senate 58 Senators have responded to their names. A quorum of the Senate is present. The Senator from West Virginia will proceed.

SENATORS FROM WEST VIRGINIA.

Mr. CHILTON. Mr. President, at the last session of Congress and on the last day of that session a certain memorial, signed by five citizens of West Virginia, one of whom is the governor of the State, was presented to the Senate. It had been understood that that session of Congress would adjourn on Saturday, the 24th of August, 1912. With that understanding, on account of illness, I obtained leave of the Senate for an absence for the rest of the session. For some reason the Senate did not adjourn on Saturday, but remained in session until Monday following, the 26th, and on that day of the session that memorial was filed. I deeply regret that two of the gentlemen who signed that memorial have since died.

Had I been present, Mr. President, or had my colleague [Mr. WATSON], who was away with a similar understanding as myself, been present, we would have asked then and there that the Senate take some kind of action which would do justice to that situation and relieve us of the suspicion which such a memorial brings upon any man against whom it may be lodged.

But we were not present, and I can never forget the kindly words then spoken and the dignified consideration with which the Senate received that paper. So far as we personally may be concerned, that sense of justice and propriety, always to be relied upon in the Senate, took care of the situation presented on August 26, 1912, probably much better than the Senators from West Virginia could have done if then present; and yet I shall always regret that we were not present and shall always feel that fate then tempted our enemies with a rare opportunity to strike under the belt. The men who signed it were all members of parties other than the one to which the two Senators from West Virginia belong. That fact may have influenced them or it may not; but it has little or no effect in this body, and I shall treat the subject as if their motives were lofty and as if the campaign then pressing did not guide the pen which wrote their names to the paper.

Afterwards, however, we went through a campaign in West Virginia in which those charges were more or less adverted to. While I do not want to go into the details, I wish to say to the Senate that it had no effect, so far as Senator WATSON was concerned, upon that result. His home county gave him a record-breaking majority, his congressional district gave his party a majority, and his senatorial district, for the first time in many years, went Democratic.

On account of illness in my family, and on account of the necessary and unavoidable absence of Senator WATSON during a great part of the present session, it has been impossible for me to give consideration to this matter, and indeed I supposed that the committee of the Senate having it in charge, which I believe to be fair, whose judgments I believe are never dictated from political considerations, would do whatever might be just and proper, and having had no opportunity to meet the thrust when it was delivered, I have allowed the days to pass in the knowledge that we were innocent and that no investigation could harm us. Having no fears, and the campaign being over, we felt no need of a grand-stand play and abided the result of the committee's work.

But recently I had information that the man who had made a statement against Senator WATSON and myself, or was said to have made a statement against us, had retracted that statement publicly, and privately as well. But I had no definite knowledge thereof, nor did Senator WATSON, till within the last few days.

I wish the Senate to know that not a human being who ever lived ever questioned upon his own responsibility my right or the right of my colleague to a seat in this body. No one ever did it in the Senate or in the House of West Virginia; no one has ever done it in the public press; no one has ever done it in any paper filed here; and no one has ever done it upon the floor of this Senate. Beyond what Shock may have said, this memorial is rumor and newspaper gossip, to which any public official may at any time become the victim.

This man Shock, about whose supposed statement all of this trouble has arisen, never voted for Senator WATSON and he never voted for me. He never made a statement to the West Virginia Legislature; he never signed a statement to the West Virginia Legislature. A statement alleged to have been written or rather to have been dictated by him was read, and, as is explained in a paper which I am going to ask to have read in a moment, all the circumstances surrounding that were known to the Legislature of West Virginia, which elected us to the Senate.

My colleague within the last four or five days received a letter from Mr. Shock, which I now present to the Senate, saying that the statement referred to in the memorial was based upon no fact that involved the Senators from West Virginia or their friends; that nobody ever tried to influence his vote for them; that he alone conceived the scheme in order to defeat us before the Democratic caucus. In other words, he has very recently confessed his error, and I am glad to say that he never either signed or swore to the statement in the memorial.

I wish to lay that statement before the Senate with a statement from Senator WATSON and myself. We have prepared it as an answer to the memorial. I ask that it be referred to the Committee on Privileges and Elections, and if that committee or any Senator here or the Senate wants an investigation it will meet with my unqualified approval, and with the approval of Senator WATSON. True his term will expire in a few days. It seems practically impossible to enter upon an investigation at this session or while he may be a Member of this body. At the next session the committees will be reorganized. But these considerations only make it the more important that the Senate and the country shall know that the whole foundation of the Shock incident has crumbled away; that we have never retarded the orderly investigation of this subject, and that the committee has reached the case in due course and is dealing with the matter justly and fairly. We think that our side should go to the committee through the Senate and in the same public way that the memorial went.

I wish to say to the Senate that my election is as clear, that there is as little blot upon it within my knowledge, as the election of any Senator now before me or who ever was elected to this body. My colleague makes the same claim, and I firmly believe that he was honestly nominated and elected. I do know that he is an honest man and a valued, respected citizen of West Virginia, without a blot upon his private or public life. If there is anything wrong connected with my nomination or that of Senator WATSON, or with our election, we know nothing about it. It is most gratifying to us that not a single human being who ever voted for us in the caucus of our party, now attacked, has ever had the integrity of that vote questioned in this or in any other presence.

Mr. President, whatever the Senate may do, it will meet with the approval of the Senators from West Virginia. They crave the fullest investigation. There is not one word of truth, to my knowledge, in any charge that has ever been made, or any alleged charge, or in any newspaper article that has ever attacked their election.

I now send to the desk and ask to have this statement of Senator WATSON and myself read and referred to the Committee of Privileges and Elections, and whatever that committee or the Senate may do to that I bow without question.

The PRESIDENT pro tempore. The paper will be read without objection.

The Secretary read as follows:

To the Senate of the United States:

For the information of your honorable body we desire to reply to a certain memorial now before your committee, signed by William E. Glasscock, William Seymour Edwards, H. C. Ogden, David B. Smith, and Frederick A. MacDonald, and in order to be as brief and as clear as possible we will answer according to the order in which the said memorial sets out the several matters.

The first allegation is the statement made by the Hon. Nelson C. Hubbard, a member of the West Virginia House of Delegates, to the joint session of the legislature before a ballot for United States Senator was taken, in which he gave his reason for refusing to vote for the nominees of the Democratic caucus.

An attentive reading of what Mr. Hubbard said, as stated in the memorial, will show that he does not predicate his charge of corruption upon any fact or upon the testimony of any witness, but made it purely upon his belief, for which he offers no sufficient reason. The memorial, however, deliberately suppresses that part of Mr. Hubbard's statement in which he admitted that he had no evidence of bribery, and for the information of your committee we call attention to that part of Mr. Hubbard's statement, the omission of which the memorial indicates by stars. The omitted part is as follows:

"I do not pretend to say that I have any more information which would justify anyone at the present time as a juror under the evidence to convict any man of bribery, and I do not say that I know any court that would.

When read in connection with what the memorial quotes from Mr. Hubbard's speech, it is thus made plain that he was simply willing to declare his belief in corrupt practices, though compelled in the same connection to admit that he had no evidence.

The second allegation of the memorial is the statement of Senator George W. Bland, which, outside of some vague and general insinuations that charges of bribery had been made throughout the State, was based upon a statement made by Mr. L. J. Shock, a member of the House of delegates. That statement was that one Hamrick had given Shock $1,000 and promised him an additional $1,500 to vote for Mr. WATSON and Mr. CHILTON, and two reputable citizens of West Virginia were called in to see Shock count down the $1,000. We do not question that Shock exhibited the $1,000 to Hon. John J. Davis and Hon. W. G. Bennett, but that he had been furnished with that money for the very purpose of exhibiting it to these honorable gentlemen we think the committee will not doubt when they have read this statement. It will be noted first that the so-called statement of Shock read by Senator Bland was not signed, and it is a further fact that though he was present at the joint session, as shown by its records, when Senator Bland read his statement he did not utter a word on that subject.

Subsequently and within a few days after Bland had read Shock's statement Shock was asked to produce the $1,000 which it was charged he had received, and he explained his inability to do so by saying that two men had taken the money away from him. He further stated that he had never seen either of these two men before they took the money from him and had never seen them since.

It is not pretended that Shock raised any outcry against the men who took the money from him or even related the circumstance to anyone until he was asked to produce the money.

Shock's explanation of why he was unable to produce the money which he was asked to do as a basis of an investigation which we had requested at the hands of the legislature was so ridiculously absurd that every sensible man in the legislature at once understood that Shock had been supplied with the $1,000 for the very purpose of creating a scandal, and that those who supplied him with it were not willing to trust him with the custody of it long enough to carry out the scheme.

It is not necessary for us, however, to argue that question or to ask the committee to accept our view of the episode, because Shock himself has admitted that his story of the attempt to bribe him was a pure invention in the following letter which he voluntarily sent to Senator WATSON, the original of which we file herewith.

BURNSVILLE, W. VA., *January 8, 1913.*

Hon. C. W. WATSON, *Washington, D. C.*

DEAR SIR: The time has come when you should know the truth about the so-called Shock statement. I never have signed any statement that was read before the legislature, and I never have been under oath. I have let the talking go on because I hated to be put in a wrong light. The truth is that I set up the whole business; nobody tried to buy my vote and would not swear that they did. I wanted to nominate McGraw and I thought if I got this thousand dollars and made this play it would hurt you and CHILTON. The trick failed to work and now you have the truth. I do not know you and am sending this to you because I want justice to be done. So far as I know your election and CHILTON'S was honest and fair, and it is wrong to have this report going around.

Very truly, yours, L. J. SHOCK.

The third allegation is that a resolution to investigate the vague and indefinite charges of bribery was proposed in the Legislature of West Virginia and defeated.

While it is true that the joint session of the West Virginia Legislature refused, on a point of order, as under the Federal Statutes it was compelled to do, to postpone the election of a Senator, it is further true that the house of delegates, which was controlled by a Democratic majority of exactly 40, promptly and by a unanimous vote passed a resolution, offered by Hon. C. M. Seibert, who supported both of us in the Democratic caucus, ordering an investigation and sent it to the senate, which finally disposed of that resolution by tabling it, because in the meantime the absurd story of Mr. Shock about the money having been taken away from him by two unknown men had been made so public that it was known to all senators and representatives, and the charges of corruption which had been mainly based on it were then treated as an absurdity. This explanation which we make to the Senate is the same as was made to Seator CHILTON by Hon. D. E. French, a copy of which is attached and original of which we file. Mr. French was then a leading member of the State senate, and was unanimously nominated by the Democrats at the present session of the senate as their candidate for president of the senate. The allegation that we prevented the adoption of that resolution by the senate will be completely negatived when your committee reflects that the State senate was composed of 15 Democrats and 15 Republicans, which made it an easy matter for the investigation to have been ordered by a vote of the Republican senators, with the vote of even Senator Bland, and as there were several other Democratic senators active, aggressive, and even bitter opponents of the two nominees the investigation would have been ordered, except that every reasonable man in the senate was then thoroughly convinced that the charges were unfounded.

The committee will, of course, remember that the Legislature of West Virginia not only completed the regular session at which we were elected, but that it was subsequently convened in extraordinary session, which lasted 45 days; and during all that time, though we were in our seats at Washington, not even a suggestion that we were not entitled to our seats was made.

The fourth and last allegation in the memorial is that our election was brought about by a combination of the railroads and the Standard Oil Co. The committee will, of course, perceive by glancing at the memorial that this charge has no other or better foundation than the irresponsible comments of some newspapers, and we could well dismiss them as entitled only to the consideration which every Senator's experience warrants him in giving to them. The charge, however, is so contrary to the facts that we crave the indulgence of the committee while we show how thoroughly it is the reverse of true. In the first place the opponent of Senator WATSON was then and is now the general counsel in West Virginia of the Norfolk & Western Railroad, which was then and is now owned and controlled by the Pennsylvania Railroad, while Mr. McGraw, the opponent of Senator CHILTON, is the owner of the West Virginia Midland Railroad, which connects with the Baltimore & Ohio Railroad, and the attorney of Mr. McGraw's railroad, a member of the State senate at that time, is the same gentleman who prepared the statement of one L. J. Shock.

More than this, Mr. Hubbard, from whose speech the memorial makes a garbled quotation, was then and is now an attorney for one of the Pennsylvania Railroad lines in West Virginia.

The falsity of the charge that we were supported and elected by the Standard Oil Co. will appear to the Senate when they are told that this same Senator Bland, from whose statement at the joint session the memorial quotes so elaborately, was then and is now the attorney of the Hope Natural Gas Co., a subsidiary of the Standard Oil Co.

This statement makes it plain that we were opposed rather than supported by those special interests.

There is one statement made in these newspaper clippings to which we feel called upon to reply particularly. The memorial recites an editorial from the Monroe County Watchman, in which the editor of that paper quotes a letter from one of his correspondents, who is represented as saying, "We have positive information that $150,000 was expressed here last week for the purpose of corrupting the delegates. This information comes from such sources as render it absolutely reliable and proof is obtainable to a moral and legal certainty."

In reply to this assertion we state upon our honor as men and as Senators that neither $150,000 nor any other sum was expressed to us or to any of our friends for the purpose of corrupting the delegates or for any other purpose.

It can not be deemed inappropriate for us to say that the sinister purpose of this memorial is apparent from the fact that it was presented to the Senate on the last day of its last session when there could be no possible expectation of any action on it before the general election in November. Neither will it be out of place for us to say that after these charges, vague and indefinite as they are, have been circulated industriously throughout West Virginia for two years, Senator WATSON has been renominated by the unanimous vote of the Democratic caucus to succeed himself, thus expressing to the Senate and to

the world the judgment of the people who have the best opportunity and are in the best position to know the truth or falsity of them.

Reading this memorial in connection with our answer, we feel confident that your committee will promptly report to the Senate that no ground for an investigation has been shown. If any reasonable cause to challenge our election were before you, we would immediately demand an investigation as a matter of justice to the Senate, to the State of West Virginia, and to ourselves, but we do not believe that the time of the Senate ought to be wasted, the name of our State brought into question, and our attention diverted from our duties by a proceeding instigated by political revenge and supported by accusations which we have shown to be utterly unfounded.

C. W. WATSON.
W. E. CHILTON.

BLUEFIELD, W. VA., *June 17, 1911.*

Hon. WM. E. CHILTON,
Washington, D. C.

MY DEAR SENATOR: Yours of the 15th instant in regard to the statements made by Delegate Shock, of Braxton County, last winter, at Charleston, in regard to the election of United States Senators, received.

The facts in regard to this matter, as I now recollect them, are as follows:

Shock in his statement which was read at the joint session of the legislature, in which yourself and Senator WATSON were elected, said that just prior to the Democratic caucus at which you and Senator WATSON were nominated as the Democratic candidates for United States Senators he had been paid $1,000 by a man—my recollection is Hambrick, from Clay—as a part consideration, that he, Shock, would vote in the Democratic caucus for yourself and WATSON, and that Shock took the money to Judge Bennett, who counted it. Afterwards Shock went into the said caucus, and without saying anything in the said caucus about the payment of the money to him, voted on every ballot against yourself and Senator WATSON, and did not make any public statement concerning said matter until the joint session of the legislature was held, at which United States Senators were elected, at which time the statement above referred to, which purported to have been made by Shock, was read. It was also publicly stated and generally discussed among the members of the legislature and others that after the said caucus Shock stated to various members of the legislature and other persons that two men whom he did not know, neither of them being the man who gave him the money, came to him and demanded the said $1,000, and that thereupon he, Shock, delivered the money to the said strangers, neither of whom he has ever seen since; that he did not know either of the said men and that he did not take their names. That Mr. Hambrick, the person whom Shock claims gave him the money, upon hearing of Shock's statement, came to Charleston and confronted Shock, and that Shock then stated that Hambrick was not the man who gave him the money and that he did not know who the man was. That he had understood that it was Hambrick, and for that reason had named him as the man who had given him the money. It was also commonly reported that Shock had stated that he proposed to trap and expose any efforts at corruption in the selection of United States Senators.

In view of this state of affairs, I felt at the time, and still feel, and think most of the other senators thought likewise, that an investigation was unnecessary and uncalled for, and that for the senate to undertake to investigate such flimsy charges would not have reflected credit upon the senate and would only have lent color to charges which in themselves contained nothing substantial or tangible upon which an investigation could properly be based. In fact, this entire matter, to my mind, bore the earmarks of a fabricated scheme in which Shock was simply made a tool of, perhaps innocently, by others, who in this way sought to raise a cry of corruption in the Democratic Party and thus to reflect discredit upon the party and the United States Senators which it elected.

I recollect distinctly the statement made by Senator WATSON before the joint session of the legislature which elected him to the United States Senate, that if anyone could produce reasonable proof of corruption on his part in connection with his election to the United States Senate he would resign the office, and that you on the same occasion publicly stated that you courted the fullest investigation that any person or body of men could make of these charges. So far as I know, neither yourself nor Senator WATSON ever expressed a wish or said anything to prevent or hinder an investigation of these matters.

It is my recollection that you went into the Democratic caucus with some thirty-odd votes affirmatively for you, and I know there were others who held you as their second choice. The fact that Col. McGraw, who was your opponent in the Democratic caucus, came from an adjoining county to Senator WATSON, and that he was not a candidate against WATSON for the short term, and the further fact that it was not probable that both United States Senators would be selected from the same section of the State is certainly a sufficient explanation of the fact that many of your friends voted for WATSON and his friends voted for you.

With best wishes, I beg to remain,
Yours, very sincerely,
D. E. FRENCH.

The PRESIDENT pro tempore. The statement will be referred to the Committee on Privileges and Elections.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had passed the following bill and joint resolution:

S. 3225. An act providing when patents shall issue to the purchaser or heirs of certain lands in the State of Oregon; and

S. J. Res. 156. Joint resolution to appoint George Gray a member of the Board of Regents of the Smithsonian Institution.

The message also announced that the House had passed the following bills, each with amendments, in which it requested the concurrence of the Senate:

S. 3843. An act granting to the coal-mining companies in the State of Oklahoma the right to acquire additional acreage adjoining their mine leases, and for other purposes; and

S. 3952. An act for the purpose of repealing so much of an act making appropriations for the current and contingent expenses of the Indian Department for fulfilling treaty stipulations with various Indians located in Kansas City, Kans., providing for the sale of a tract of land located in Kansas City, Kans., reserved for a public burial ground under a treaty made and concluded with the Wyandotte Tribe of Indians on the 31st day of January, 1885, said section of said act relating to the sale of said land be, and the same is hereby, repealed.

The message further announced that the House has passed the following bills, in which it requested the concurrence of the Senate:

H. R. 11478. An act to quiet title and possession with respect to a certain unconfirmed and located private land claim in Baldwin County, Ala., in so far as the records of the General Land Office show said claim to be free from conflict;

H. R. 27323. An act to provide for refund or abatement under certain conditions of penalty taxes imposed by section 38 of the act of August 5, 1909, known as the special excise corporation-tax law;

H. R. 27875. An act authorizing the President to convey certain land to the State of Texas;

H. R. 27879. An act providing authority for the Northern Pacific Railway Co. to construct a bridge across the Missouri River in section 36, township 134 north, range 79 west, in the State of North Dakota;

H. R. 27986. An act to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn.;

H. R. 27987. An act to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn.;

H. R. 27988. An act to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn.;

H. R. 27944. An act to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn.;

H. R. 28093. An act to amend the general pension act of May 11, 1912; and

H. R. 28094. An act to amend section 96, chapter 5, of the act of Congress of March 3, 1911, entitled "The Judicial Code."

The message also returned to the Senate, in compliance with its request, the bill (H. R. 17256) to fix the status of officers of the Army and Navy detailed for aviation duty, and to increase the efficiency of the aviation service.

The message further announced that the House had passed resolutions commemorative of the life and public services of Hon. ISIDOR RAYNER, late a Senator from the State of Maryland.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the President pro tempore:

H. R. 2359. An act to refund certain tonnage and light dues;

H. R. 8151. An act providing for the adjustment of the grant of lands in aid of the construction of the Corvallis and Yaquina Bay military wagon road and of conflicting claims to land within the limit of said grant;

H. R. 12813. An act to refund duties collected on lace-making and other machinery and parts or accessories thereof imported subsequently to August 5, 1909, and prior to January 1, 1911;

H. R. 15181. An act for the relief of Harry S. Wade;

H. R. 20385. An act to reimburse Charles S. Jackson;

H. R. 23351. An act to amend an act entitled "An act to provide for an enlarged homestead";

H. R. 24365. An act providing for the taking over by the United States Government of the Confederate cemetery at Little Rock, Ark.;

H. R. 25741. An act amending section 3392 of the Revised Statutes of the United States as amended by section 32 of the act of August 5, 1909;

H. R. 26549. An act to provide for the purchase or construction of a motor boat for customs service; and

H. R. 27157. An act granting an extension of time to construct a bridge across Rock River at or near Colona Ferry, in the State of Illinois.

CREDENTIALS.

Mr. NEWLANDS presented the credentials of KEY PITTMAN, chosen by the Legislature of Nevada a Senator from that State to fill the vacancy in the term ending March 4, 1917, occasioned by the death of George S. Nixon, which were read and ordered to be filed.

Mr. CLAPP presented the credentials of KNUTE NELSON, chosen by the Legislature of Minnesota a Senator from that State for the term beginning March 4, 1913, which were read and ordered to be filed.

PETITIONS AND MEMORIALS.

Mr. LODGE. I present resolutions adopted by the Board of Trade of North Attleboro, Mass., expressing their belief that

many improper classifications under the present tariff act, to the serious disadvantage of the jewelry and silverware industries, are due to the inclusion of the words "gold," "silver," and "platinum" in the final paragraph of the so-called metal schedule; and also expressing its disapproval of the inclusion of the words "gold," "silver," and "platinum" in the same paragraph with iron, steel, tin, lead, and so forth; and favoring a special paragraph either to precede or follow the paragraph referring to the cheaper metals, and in this new paragraph that the same rates be approved as are approved for the so-called jewelry paragraph. I move that the resolutions be referred to the Committee on Finance.

The motion was agreed to.

Mr. LODGE. I have a copy of resolutions adopted at a meeting of the Democratic town committee of Norton, Mass., a committee elected by the Democratic voters of that town to promote the best interests of the Democratic Party, expressing their disapproval of any reduction of the duty on jewelry, silverware, and kindred articles and urging upon Congress the necessity of maintaining the present rates of duty. I move that the resolutions be referred to the Committee on Finance.

The motion was agreed to.

Mr. LODGE. I present resolutions adopted by the Board of Selectmen of North Attleboro, Mass., favoring the present percentage of protective tariff on jewelry and silverware. I move that the resolutions be referred to the Committee on Finance.

The motion was agreed to.

Mr. POINDEXTER presented memorials of the congregations of the Seventh-day Adventist Churches of Fruitland, Friday Harbor, Elma, Tacoma, Walnut Grove, Centralia, Battleground, Hillyard, Carrollton, Aberdeen, Montesano, Puyallup, Walla Walla, Sara, and College Place, all in the State of Washington, remonstrating against the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which were ordered to lie on the table.

He also presented a petition of Island Grange, No. 290, Patrons of Husbandry, of Arlington, Wash., praying that an investigation be made into the prosecution of the editors of the Appeal to Reason, published at Girard, Kans., which was referred to the Committee on the Judiciary.

Mr. OVERMAN presented a petition of the congregation of the West Market Street Methodist Episcopal Church, of Greensboro, N. C., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

He also presented a memorial of the congregation of the Seventh-day Adventist Church of Albemarle, N. C., remonstrating against the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which was ordered to lie on the table.

Mr. CULLOM. I present a large number of memorials, signed by four or five thousand citizens of my State, remonstrating against the passage of the so-called Owen health bill. I move that the memorials be received and lie on the table.

The motion was agreed to.

Mr. FLETCHER presented memorials of sundry citizens of St. Andrews and Pensacola, in the State of Florida, remonstrating against the enactment of legislation providing for the Federal regulation of pilotage and pilots, which were referred to the Committee on Commerce.

Mr. GALLINGER presented a petition of the congregation of the Methodist Episcopal Church of Keene, N. H., and a petition of the congregation of the Federated Church, of New Market, N. H., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented a petition of sundry citizens of Cleveland Park, D. C., praying that an appropriation be made for the paving of a portion of Macomb Street in the District of Columbia, which was referred to the Committee on Appropriations.

He also presented the memorial of Philip T. Hall, of Washington, D. C., remonstrating against the enactment of legislation regulating the hours of employment for women in the District, which was referred to the Committee on the District of Columbia.

Mr. SHIVELY. I have here brief resolutions in the nature of a petition adopted by the Supreme Temple of the Order of Larks, of Portland, Ind., favoring the calling of an international congress for bird protection. I ask that the resolutions lie on the table and be printed in the RECORD.

There being no objection, the resolutions were ordered to lie on the table and to be printed in the RECORD, as follows:

Resolutions of the Supreme Temple of the Order of Larks, supreme offices, Portland, Ind.

Whereas one of the corporate objects of this order is the discouragement of the killing of harmless birds and the use of their plumage for commercial purposes and the advancement of legislation to carry out said object; and

Whereas efforts are now being made by the National Association of Audubon Societies to secure the passage of tariff legislation which will practically bar the importation of plumage of rare birds; and

Whereas a resolution has recently been introduced in the Senate of the United States by Senator ROOT which authorizes the calling of an international congress for bird protection: Now therefore be it

Resolved by the Supreme Temple of the Order of Larks (comprising all of the subordinate temples of the order in the United States), That the said tariff legislation so proposed by the National Association of Audubon Societies be, and the same is hereby, indorsed and recommended to the Congress as to be in the interests of bird conservation and protection; and be it further

Resolved, That the resolution of Senator ROOT calling for an international congress for bird protection be, and the same is hereby, indorsed and recommended to the Congress for the same reasons; be it further

Resolved, That a copy of these resolutions be forwarded to one of the Senators from Indiana, with the request that the same be presented to the Congress as a petition asking for such legislation.

THE SUPREME TEMPLE OF THE ORDER OF LARKS,
By S. A. D. WHIPPLE, *Supreme Majesty.*

Attest:

MORTON N. HAWKINS,
Supreme Commissioner.

JANUARY 28, 1913.

Mr. SHIVELY presented the petition of John W. Sidener and 25 other members of the Young Men's Bible Class of the First Baptist Church of Crawfordsville, Ind., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. SUTHERLAND presented a petition of the congregation of the Seventh-day Adventist Church of Salt Lake City, Utah, remonstrating against the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which was ordered to lie on the table.

Mr. NELSON presented a memorial of the congregations of the Seventh-day Adventist Churches of Baker, St. Cloud, and Sauk Center, all in the State of Minnesota, remonstrating against the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which was ordered to lie on the table.

Mr. GRONNA. I present a telegram from the president of the Grand Forks District Medical Society, in my State, favoring the passage of the so-called Owen health bill. The telegram is very brief, and I ask that it lie on the table and be printed in the RECORD.

There being no objection, the telegram was ordered to lie on the table and to be printed in the RECORD, as follows:

GRAND FORKS, N. DAK., *February 4, 1913.*

Senator GRONNA, *Washington, D. C.:*

The Grand Forks District Medical Society, composed of the physicians practicing in Grand Forks, Walsh, Pembina, Cavalier, and Nelson Counties, favor the passage of the Owen bill. They hope you will give it your hearty support.

H. M. WHEELER, *President.*

Mr. GRONNA presented a petition of the congregation of the Rock Lake Church of North Dakota, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. BROWN presented telegrams in the nature of petitions from sundry members of the medical societies of North Platte, Broken Bow, Grand Island, Omaha, and Pawnee City, and of sundry physicians of Madison, Gothenburg, Alliance, Falls City, and David City, all in the State of Nebraska, praying for the establishment of a national department of public health, which were ordered to lie on the table.

Mr. BURTON presented petitions of sundry citizens of Mansfield, Wooster, Nova, Burgoon, Crawford County, Hillsboro, Newark, Lancaster, and Dayton, all in the State of Ohio, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. LA FOLLETTE presented petitions of sundry citizens of Grand Rapids, Waupaca, Milwaukee, Delavan, and Green Bay, all in the State of Wisconsin, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. HITCHCOCK presented memorials of the Farmers' Educational and Cooperative Unions of Scribner, Logan, Nickerson, and Hooper, in the State of Nebraska, remonstrating against the adoption of the so-called Aldrich currency system, which were referred to the Committee on Finance.

Mr. PERKINS presented a petition of the Labor Council of San Francisco, Cal., praying for the recognition of the Republic of China by the United States Government, which was referred to the Committee on Foreign Relations.

He also presented a petition of the Federated Trades Council of Sacramento, Cal., and a petition of the Trades and Labor Council of Vallejo, Cal., praying for the enactment of legislation providing for the inspection of locomotive boilers and safety appliances for railway equipment, which were referred to the Committee on Interstate Commerce.

Mr. ROOT presented petitions of sundry citizens of Albany and Cortland and of the congregation of the Olivet Presbyterian Church, all in the State of New York, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. TOWNSEND presented a memorial of Nelson Arbor, No. 165, Ancient Order of Gleaners, of Fremont, Mich., remonstrating against any reduction of the postage on first-class mail matter, which was referred to the Committee on Post Offices and Post Roads.

He also presented petitions of the congregations of the Seventh-day Adventist Church of Reese, Mich., and a petition of the congregation of the Seventh-day Adventist Church of Fremont, Mich., remonstrating against the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which were ordered to lie on the table.

Mr. JONES presented a telegram in the nature of a petition from Dr. S. T. Miller, of Wenatchee, Wash., and a telegram in the nature of a petition from Dr. J. H. Woodside, of Redmond, Wash., praying for the passage of the so-called Army veterinary bill, which were referred to the Committee on Military Affairs.

He also presented telegrams in the nature of petitions from the State commissioner of health, from E. L. Farnsworth, of Olympia, and from Dr. Henry D. Brown, secretary of the King County Medical Society, all in the State of Washington, praying for the passage of the so-called Owen health bill, which were ordered to lie on the table.

He also presented resolutions adopted by the Chamber of Commerce of Montesano, Wash., favoring the repeal of the parole law, which were referred to the Committee on the Judiciary.

He also presented resolutions adopted by the Chamber of Commerce of Montesano, Wash., favoring the repeal of the bankruptcy law, which were referred to the Committee on the Judiciary.

REPORTS OF COMMITTEES.

Mr. LODGE, from the Committee on Foreign Relations, to which was referred the amendment submitted by Mr. BURTON on the 4th instant, proposing to appropriate $5,000 for the participation of the United States by official delegates at the international conference for the purpose of drawing up international rules and regulations for the assignment of load lines to merchant ships, etc., intended to be proposed to the diplomatic and consular appropriation bill, reported favorably thereon, and moved that it be referred to the Committee on Appropriations and printed, which was agreed to.

Mr. OLIVER, from the Committee on Claims, to which was referred the bill (S. 6691) to indemnify the State of Massachusetts for expenses incurred by it in defense of the United States, reported it with an amendment and submitted a report (No. 1188) thereon.

Mr. BROWN. From the Committee on Patents I report favorably, without amendment, the bill (H. R. 23568) to amend section 55 of "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909, and I submit a report (No. 1187) thereon. I ask that the report of the House be made a part of the Senate report and that it be printed.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MARTINE of New Jersey, from the Committee on Claims, to which was referred the bill (S. 7619) for the relief of Laetitia M. Robbins, reported adversely thereon, and the bill was postponed indefinitely.

Mr. NELSON, from the Committee on Public Lands, to which was referred the bill (S. 7845) relating to the adjudication of homestead entries in certain cases, reported it with an amendment and submitted a report (No. 1189) thereon.

Mr. MARTIN of Virginia, from the Committee on Commerce, to which was referred the bill (S. 8204) to authorize the Buckhannon & Northern Railroad Co. to construct and operate a bridge across the Monongahela River, in the State of West Virginia, reported it with an amendment and submitted a report (No. 1190) thereon.

Mr. POINDEXTER, from the Committee on Public Buildings and Grounds, to which was referred the bill (S. 5179) directing the Secretary of the Treasury to prepare designs and estimates for and report cost of a national archives building in the District of Columbia, reported it with amendments and submitted a report (No. 1191) thereon.

APPOINTMENTS IN THE DIPLOMATIC OR CONSULAR SERVICE.

Mr. BRYAN. From the Committee on Naval Affairs I report favorably the bill (S. 8082) to amend section 1440 of the Revised Statutes of the United States, and I ask unanimous consent for its present consideration.

The PRESIDENT pro tempore. The Senator from Florida asks for the present consideration of the bill just reported by him. Is there objection?

There being no objection, the bill was considered as in Committee of the Whole. It proposes to amend section 1440 of the Revised Statutes of the United States so as to read:

SEC. 1440. If any officer of the Navy on the active list accepts or holds an appointment in the Diplomatic or Consular Service of the Government he shall be considered as having resigned his place in the Navy, and it shall be filled as a vacancy.

Mr. ROOT. May I ask if unanimous consent has been given for the consideration of the bill?

The PRESIDENT pro tempore. The Chair did not put it in the form of a request for unanimous consent, but submitted it as a request, and announced that no objection had been heard.

Mr. ROOT. I do not wish to object, but I should like to know the reasons for further legislation at this time on this subject.

Mr. BRYAN. Section 1440 of the Revised Statutes, as it exists to-day, allows neither officers on the active list of the Navy nor officers on the retired list of the Navy to be appointed to positions in the Diplomatic or Consular Service. This bill is designed to allow officers on the retired list to be eligible for appointment in the Consular Service.

Mr. ROOT. I do not yet understand the object of the bill.

Mr. LODGE. If the Senator will allow me, the law that is sought to be amended is an old law that has been on the statute books since 1868, and it has led to a good deal of trouble, because the courts have construed it as covering both the active and the retired lists. This bill simply confines it to the active list.

Mr. ROOT. What does it confine to the active list?

Mr. LODGE. Appointments to the Consular or Diplomatic Service.

Mr. ROOT. May the bill be again read?

The Secretary again read the bill.

Mr. ROOT. Mr. President, as I understand, the bill allows officers of the Navy upon the retired list to be appointed to diplomatic positions.

Mr. BRANDEGEE. It cuts off those on the active list.

Mr. ROOT. Leaving the prohibition against those on the active list. I move to amend the bill by inserting, after the word "Navy," the words "or Army."

The PRESIDENT pro tempore. The Senator from New York proposes an amendment, which will be stated.

The SECRETARY. After the word "Navy," in line 6, it is proposed to insert the words "or Army."

The amendment was agreed to.

The PRESIDENT pro tempore. The Chair would suggest to the Senator from New York that a further amendment would be needed in line 9 so as to include the Army. The words "or Army, as the case may be," should be inserted.

Mr. ROOT. I should be glad to have that done.

The PRESIDENT pro tempore. The Secretary will state the proposed amendment.

The SECRETARY. In line 9, after the word "Navy," it is proposed to insert "or Army, as the case may be."

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

STATUE OF JOHN MARSHALL.

Mr. SWANSON. From the Committee on the Library I report back favorably without amendment the bill (S. 7657) for the erection of a statue to John Marshall, and I submit a report (No. 1186) thereon. I ask for the immediate consideration of the bill.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. CULBERSON. Let it be read.

Mr. SWANSON. Let the bill be read.

The PRESIDENT pro tempore. It will be read.

The Secretary read the bill.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. BRISTOW. Is this a proposition for the Federal Government to erect a statue in a State building somewhere?

Mr. SWANSON. It is proposed to erect it in the Federal building at Richmond.

Mr. MARTIN of Virginia. I will say to the Senator from Kansas that the National Government has about completed a new building costing about $1,000,000 in the city of Richmond——

The PRESIDENT pro tempore. The question now is upon the consideration of the bill.

Mr. MARTIN of Virginia. It is proposed to place the statue in that building.

Mr. BRISTOW. I may want to offer some amendments to it. There are some statues which I should like to have erected out in Kansas. I ask that the bill may go over.

The PRESIDENT pro tempore. Under objection the bill will go over. It will be placed on the calendar.

LOREN W. GREENO.

Mr. THORNTON. From the Committee on Naval Affairs I report favorably, without amendment, the bill (S. 8230) for the relief of Loren W. Greeno, and I call the attention of the Senator from Ohio [Mr. POMERENE] to the bill.

Mr. POMERENE. I ask unanimous consent for the present consideration of the bill.

The PRESIDENT pro tempore. The Senator from Ohio asks unanimous consent for the present consideration of the bill. Is there objection?

Mr. GALLINGER. Let the bill be read for the information of the Senate.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It authorizes the President to appoint Loren W. Greeno an ensign in the United States Navy on the retired list.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

CLAIMS AGAINST MEXICO.

Mr. ROOT. From the Committee on Foreign Relations I report a concurrent resolution (S. Con. Res. 40), for which I ask present consideration. I call the attention of the Senator from Arizona [Mr. SMITH] to the resolution.

The PRESIDENT pro tempore. The concurrent resolution will be reported.

The Secretary read as follows:

Resolved by the Senate (the House of Representatives concurring), That the report of the Secretary of War, under the joint resolution directing the Secretary of War to investigate the claims of American citizens for damages suffered within American territory growing out of the late insurrection in Mexico, approved August 9, 1912, be transmitted to the President, who is hereby respectfully requested to cause a claim for the amount of the damages reported therein as suffered by American citizens within American territory to be presented to the Government of Mexico as a claim in behalf of the Government of the United States.

The PRESIDENT pro tempore. The Senator from New York asks for the present consideration of the resolution. Is there objection?

Mr. SMITH of Arizona. Mr. President——

The PRESIDENT pro tempore. The question is upon the request for present consideration. Is there objection?

Mr. SMITH of Arizona. Reserving simply the right to object, I wish to say——

The PRESIDENT pro tempore. The question first is on the present consideration of the concurrent resolution.

Mr. SMITH of Arizona. Have I the right to the floor, to say what I please?

The PRESIDENT pro tempore. By unanimous consent the Senator can proceed. No debate is in order, except by unanimous consent, until after the question of present consideration has been acted upon.

Mr. SMITH of Arizona. I do not want to object to the resolution. I want to understand it. Reserving the right to object, I thought I could then proceed, as was the custom in the other body where I have served.

Mr. GALLINGER. I ask unanimous consent, Mr. President.

The PRESIDENT pro tempore. The Senator is proceeding by unanimous consent.

Mr. SMITH of Arizona. Have I the floor by the unanimous consent of the Senate?

The PRESIDENT pro tempore. By unanimous consent, the Senator will proceed.

Mr. SMITH of Arizona. Mr. President, I thought I had it before proceeding to obtain the information I desire.

Being in order, then, at last, I wanted to say to the Senator from New York that I thought it had been understood that these claims for damages sustained by citizens of the United States on American soil occasioned by Mexican soldiery shooting across the international line were to be investigated by the commission under the resolution heretofore reported by the Senator from New York from the Committee on Foreign Relations; that those claims were to be presented to our own Congress for payment, and then that the United States would proceed in the order suggested in the resolution now before the Senate.

My interest in the whole matter is to make this claim first one against the Federal Government itself for damages to its own citizens, and then that the Government shall place before Mexico its claim for reimbursement for the money paid out in these cases.

The commission went to the city of El Paso, Tex., and to Douglas, Ariz. They made an investigation and a report fixing the amount that the commission thought should be paid to these people. I wish to suggest to the Senator from New York that if these people are to be relegated to trusting the department here to get that money from Mexico, they may as well quit right now. The conditions in Mexico are such that nobody can get payment of a claim from the Government of Mexico. Probably two billions of foreign capital are doing the business of Mexico. There is—from the best obtainable information—not less than $800,000,000 of American money invested there, and fully as much more by other nations. There is no earthly chance of these people getting their money during their lifetime if we are to proceed diplomatically with the collection of a claim against Mexico.

This has been such an outrage, such an insult to the Nation, that I never dreamed that any postponement would occur in the payment of these claims, further than that Congress would pass a law allowing these men the amounts found due in these cases and pay them out of our Treasury, and then that the United States Government would make its claim for reimbursement against the Republic of Mexico.

This reckless shooting of American citizens on our own soil by armed soldiers in Mexico was virtually an act of war on the part of Mexico, and our forbearance should have induced an immediate reparation by that Republic. Congress can do no less than pay the claims and look, as I have said, to Mexico for reimbursement.

Mr. ROOT. Mr. President——

The PRESIDENT pro tempore. The Senator from New York will also proceed by unanimous consent.

Mr. ROOT. I will say to the Senator from Arizona, in the first place, that I am in favor of paying these claims. I think the Government of the United States should pay them. We are, however, approaching the close of the short session. The bill providing for payment has not yet been reported. Whether they are paid or not the theory of obligation upon which the bill rests will necessarily lead to the making of a claim against Mexico in behalf of the United States.

Mr. SMITH of Arizona. I understand.

Mr. ROOT. The view upon which the resolution directing the Secretary of War to make an investigation and report was drafted and passed was that these Americans, never having gone into the territory of Mexico, but remaining upon the soil of their own country, could not be relegated to a claim against Mexico for redress for the injury they had suffered, and that the Government of the United States should make it a national matter and should itself take the burden of prosecuting their claim.

This was an alternative to a resolution which was offered in the Senate and which was voted down, conferring authority upon the President to use the military forces of the United States to secure redress and prevent further injuries. There was substituted an assumption by the Government of the United States of its responsibility, to be borne by the peaceful processes of diplomacy, impressing a claim of the Government for the warlike proposals upon the one side and the relegation of these weak individual citizens to their claims against Mexico on the other side.

Now, whether the claims be paid by the United States, as I think they ought to be, or not, the resolutions some time or other should be adopted, and it seemed to the Committee on Foreign Relations that there should be no delay about it.

I will call the attention of the Senator from Arizona further to the fact that the adoption of this resolution is the adoption of the principle of governmental responsibility.

Mr. SMITH of Arizona. Mr. President, I now understand more clearly than I did from hearing the resolution read the course which will be pursued ultimately, whether Congress passes the bill for relief or not. Its passage in no way will affect our action hereafter on a bill for the payment of these claims or tend to retard action when it shall come before the Senate. In this view of the matter, of course no objection should be made. I hope the resolution will pass.

The concurrent resolution was considered by unanimous consent and agreed to.

THE SENATE MANUAL.

Mr. WARREN, from the Committee on Rules, reported the following resolution (S. Res. 447), which was considered by unanimous consent and agreed to:

Resolved, That the Committee on Rules be instructed to prepare a new edition of the Senate Manual, and that there be printed 4,500 copies of the same for the use of the committee, of which 250 copies shall be bound in full morocco and tagged as to contents.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. PERKY:

A bill (S. 8376) to amend an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911 (with accompanying papers); to the Committee on the Judiciary.

By Mr. NELSON:

A bill (S. 8377) to authorize the Northern Pacific Railway Co., its successors and assigns, to construct, maintain, and operate a bridge and approaches thereto across the Mississippi River in Minneapolis, Hennepin County, Minn.; to the Committee on Commerce.

By Mr. GALLINGER:

A bill (S. 8378) relating to private education in the District of Columbia; to the Committee on the District of Columbia.

By Mr. WORKS:

A bill (S. 8379) for the relief of Ellen B. Monahan; to the Committee on Claims.

By Mr. JONES:

A bill (S. 8380) directing the issuance of patent to John Russell; to the Committee on Public Lands.

By Mr. MARTINE of New Jersey:

A bill (S. 8381) to amend section 96, chapter 5, of the act of Congress of March 3, 1911, entitled "The Judicial Code"; to the Committee on the Judiciary.

By Mr. GRONNA:

A bill (S. 8382) to prohibit the interstate shipment of impure seeds; to the Committee on Agriculture and Forestry.

By Mr. BROWN (by request):

A bill (S. 8383) to authorize the Secretary of the Interior to cancel and set aside segregations of public lands under the Carey Act; to the Committee on Public Lands.

By Mr. OVERMAN:

A bill (S. 8384) to appoint Frederick H. Lemly a passed assistant paymaster on the active list of the United States Navy; to the Committee on Naval Affairs.

By Mr. DILLINGHAM:

A bill (S. 8385) granting an increase of pension to Asil N. Blanchard (with accompanying papers); to the Committee on Pensions.

By Mr. O'GORMAN:

A bill (S. 8386) for the relief of Nelson D. Dillon (with accompanying paper); to the Committee on Claims.

By Mr. BACON:

A bill (S. 8387) granting a pension to Mary E. Spraberry; to the Committee on Pensions.

By Mr. McCUMBER:

A bill (S. 8388) granting an increase of pension to Thomas L. Collins (with accompanying papers); to the Committee on Pensions.

By Mr. CRAWFORD:

A bill (S. 8389) to provide for an enlarged homestead; to the Committee on Public Lands.

REMOVAL OF CAUSES FROM FEDERAL TO STATE COURTS.

Mr. PERKY. I introduce a bill and I ask that it be read at length.

The bill (S. 8376) to amend an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, was read the first time by its title and the second time at length, as follows:

Be it enacted, etc., That section 28 of an act approved March 3, 1911, and entitled "An act to codify, revise, and amend the laws relating to the judiciary," be, and the same is hereby, amended by adding thereto the following: *"And provided further*, That no suit shall be removable solely upon the ground of diversity of citizenship by any party thereto who shall at the time of the institution of said suit have an established place of business within the State where said suit was originally instituted," so that said section shall read, when so amended, as follows:

"SEC. 28. Any suit of a civil nature at law or in equity arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought in any State court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district. Any other suit of a civil nature at law or in equity of which the district courts of the United States are given jurisdiction by this title, and which are now pending or which may hereafter be brought in any State court, may be removed into the district court of the United States for the proper district by the defendant or defendants therein, being nonresidents of that State. And when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different States and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the district court of the United States for the proper district. And where a suit is now pending or may hereafter be brought in any State court in which there is a controversy between a citizen of the State in which the suit is brought and a citizen of another State any defendant, being such citizen of another State, may remove such suit into the district court of the United States for the proper district at any time before the trial thereof, when it shall be made to appear to said district court that from prejudice or local influence he will not be able to obtain justice in such State court, or in any other State court to which the said defendant may under the laws of the State have the right, on account of such prejudice or local influence, to remove said cause: *Provided*, That if it further appear that said suit can be fully and justly determined as to the other defendants in the State court without being affected by such prejudice or local influence, and that no party to the suit will be prejudiced by a separation of the parties, said district court may direct the suit to be remanded, so far as it relates to such other defendants, to the State court to be proceeded with therein. At any time before the trial of any suit which is now pending in any district court, or may hereafter be entered therein, and which has been removed to said court from a State court on the affidavit of any party plaintiff that he had reason to believe and did believe that from prejudice or local influence he was unable to obtain justice in said State court, the district court shall, on application of the other party, examine into the truth of said affidavit and the grounds thereof, and unless it shall appear to the satisfaction of said court that said party will not be able to obtain justice in said State court it shall cause the same to be remanded thereto. Whenever any cause shall be removed from any State court into any district court of the United States and the district court shall decide that the cause was improperly removed and order the same to be remanded to the State court from whence it came, such remand shall be immediately carried into execution, and no appeal or writ of error from the decision of the district court so remanding such cause shall be allowed: *Provided*, That no cause arising under an act entitled 'An act relating to the liability of common carriers by railroad to their employees in certain cases,' approved April 22, 1908, or any amendment thereto and brought in any State court of competent jurisdiction shall be removed to any court of the United States: *And provided further*, That no suit shall be removable solely upon the ground of diversity of citizenship by any party thereto who shall at the time of the institution of said suit have an established place of business within the State where said suit was originally instituted."

SEC. 2. All acts or parts of acts in conflict herewith are, in so far as they are in conflict, hereby repealed.

Mr. PERKY. Before the bill is referred I should like to make a brief statement as to the purpose of the bill.

The bill just introduced is designed to correct the practice of removing causes from State to Federal courts where the application to remove is based solely upon the ground of diversity of citizenship between the parties to the suit or action.

The reasoning which sustains this measure is that a person or corporation which voluntarily comes into a State and deliberately establishes a place of business therein should be required to submit his or its controversies with citizens of such State to the determination of its courts where there is no showing of local prejudice against the applicant for removal or hostile local influence working against him of such a nature as to prevent such applicant from securing justice.

The abuses against which this bill is directed were ably presented in a communication appearing in the seventy-second Central Law Journal, page 218, written by Henry S. Johnston, of Perry, Okla., which I will not take the time to read, but which I desire to adopt as a portion of my remarks, and I ask leave that it be so printed and inserted at this portion of my remarks.

The PRESIDENT pro tempore. It will be so ordered, without objection.

The matter referred to is as follows:

PERRY, OKLA.

EDITOR CENTRAL LAW JOURNAL: I opened your publication of the 17th of February and read the article appearing on page 113 entitled "Disbarment—Using a sham corporation to create diversity of citizenship."

I want to commend you for this article. One of the crying outrages perpetrated by Congress upon a long-suffering people has been the vesting of corporations with the power to remove their causes to the Federal courts, irrespective of the nature of the cause of action.

An examination of the trial calendar of any of the circuit courts will disclose that the bulk of business there transacted is the result of foreign corporations securing removal of causes commenced in the State courts.

Not long ago I examined a court calendar containing three pages about the size of your law journal and on which appeared something like 100 cases set for trial; about 85 of them were suits commenced by private citizens in State courts to recover damages from foreign corporations.

Any domestic corporation must answer for its torts, breaches of contracts, bad faith, infractions of law, and any derelictions to the courts of the State. Every natural person must do the same thing, but the legislation authorizing removal of causes on account of diversity of citizenship is a very highly esteemed special privilege acquired and enjoyed by corporations, and the great carrier corporations of the country use this Federal statute as an open doorway from which to escape responsibility for their acts.

To fairly illustrate the effect of the present system: Let us suppose that a farmer is authorized to take up trespassing animals found upon his land at the place and time of the trespass. Next, let us suppose that the law made a provision that if the trespassing animal was owned by an individual not living in his school district, that in such case he must first turn the animal loose in an uninclosed wilderness, permit it to roam 20 miles from home, and then the law would give him permission to catch it if he could. The world would immediately point to the folly of such a statute as being ridiculous, dishonest, and unfair, and a discrimination in favor of the nonresident of his school district.

In the case of a domestic corporation or a private citizen relief is afforded where the party can be found and service obtained upon him or where the accident or injury occurs, and right there they sit down together and arbitrate or lock horns and go to battle with the home

court as their referee and the confines of their territory limited to the scope of a county with the right to take depositions and bring witnesses from all parts of the globe. But forsooth, it chances to be a foreign corporation, no longer is the right to apprehend the trespasser within the confines of this corral of the farmer's own community or bailiwick, but the corporation can jump the bounds of the county fences and go to a court with State wide or district wide meanderings and attend court 60 miles from home at the capital. Then he can attend the next session of court at some other court town 150 miles from home and the next time at 200 miles from home at another court town, and follow the judge around the circuit of his district. Leg weary, tired, worn, sleepless, and purse lean at last he gets trial to find the marginal boundaries of the State do not limit the resources of this foreign corporation, but he must follow his appeal to St. Louis, St. Paul, Washington, D. C., New York, or what not, and that his representatives in the personality of cowboys, lawyers, or whatsoever they may be, must ride to unfamiliar fields and strange roads where they so seldom practice and with which they are so little familiar, known as Federal practice, procedure, legal equitable, civil, special and peculiar, blended in part with the recognition of State law and the capacity to ignore and set the same aside at will, without responsibility to the very authority which it pretends and purports to recognize. As a matter of quasi comity, there is a pretense at enforcing and recognizing State laws, but Federal judges are not responsible to the State or to the powers of the State, to the people of the State or to State institutions for their authority, and when therefore they see fit to ignore State laws there is no responsibility attached thereto, and the world simply smiles and attributes the act to the general superiority of the Federal Government over the State; the right of powers that be to recognize or ignore the inferior branches of our sovereignty at the sweet will and pleasure of the particular judge who is trying the cause.

To illustrate: Not long ago a United States judge tried a case where two workmen on a hand car going along a high trestle about 200 yards long, adjoining a bridge of somewhat greater length, were run down by a fast-running engine and tender. Proof was available that the brake on the engine was out or order and the engine should have been in the repair shop; that the same could not possibly be controlled by the engineer in charge thereof. The accident had so sickened the engineer with the conduct of corporations generally and the cold-blooded manner in which they put their men to work with defective devices and let them take their chances that he quit the road entirely.

The Oklahoma constitution provides: "The defenses of contributory negligence or of assumption of risks shall in all cases whatsoever be a question of fact, and shall at all times be left to the jury."

The Federal judge who tried this case snapped his finger at our constitution and promptly proceeded to say that "the two employees on the hand car assumed the risk of being upon the track on a hand car, and that their death resulted from a risk which they had assumed."

It is true, the engineer did all he could to stop the engine. Had he not done so or had he not been watching, the courts must have said that the last clear chance to avert the injury lay in the hands of the engineer, and it was his duty to act, and so have let the case go to the jury, had the constitution of Oklahoma never been written; but the engineer must grimly grit his teeth and ride on to certain destruction, conscious of the grinding, grasping indifference of his corporation to the defective appliances and devices in use. But the corporation was right; it had but little to fear. The widows of the two deceased men must bring their action for $2,000 or less or run the additional hazard of being removed to the United States court. They brought their suits for a large amount. The cases were removed and the judge who tried it, after listening to the evidence, took the case from the jury, with the announcement that the parties upon the track took the chances, assumed the risks, and that no recovery could be had in the case, and it would be useless to permit it to go to a jury.

The books abound with decisions of the State courts one way and with Federal decisions stating that the same identical elements of the State law enforced in that State by public policy of the State, by the legislation of the State, by the constitutional provisions of the State will be enforced by the courts of the United States, yet, upon the other hand, when it comes to practical recognition through the working out of those principles the book equally abounds with decisions where the Federal judiciary perpetually and forever ignores the very laws it purports in another breath to honor and respect.

One more suggestion and then I wish to propose a remedy. The suggestion is that it is infinitely better that within the limits of a State the law be uniform in its application; that no matter in what forum the law is applied or where people go for their remedies the law should be the same, and that it shall be plain, speedy, prompt, and adequate, and meted out as nearly as practicable at the doorway of the party invoking its sanctions. It is of no consequence or very little consequence that the Federal decisions of New York are harmonious with those of Oklahoma upon questions of local application, but it is infinitely important that the Federal decisions upon question of local application should coincide with those of our own State courts.

And now for the remedy. The remedy lies in placing the differences and controversies between litigants back within the jurisdiction of the State courts; lay the ax in the root of the tree; let Congress repeal or at least modify this Federal policy. Some provision similar to the following would do the work:

"Provided, however, That the right of removal on account of diversity of citizenship shall not apply to corporations domiciled within a foreign State or which transacts business within such foreign State or for the commission of any tort within the jurisdiction of such foreign State or for the breach of any contract made or to be carried out in whole or in part within such foreign State."

My suggestion now to you is that since your paper has perceived the wrong and given it publicity as you have the awakening of conscience and the conviction of judgment which you have experienced imposes upon you a duty, to wit, that of educating the bar and the judiciary, and thereby effectively reaching Congress with a universal, concentrated demand for remedial legislation touching this evil.

I regret to have taken so much of your time, as I necessarily do in writing this long letter, and yet I felt I could not escape the sense of duty my own knowledge carries with it.

Truly, yours, HENRY S. JOHNSTON.

NOTE.—The letter of our correspondent is much appreciated. Congress, we believe, intended by the conformity act to indicate that nothing should interfere with the constitutional purpose merely to furnish a court free from local prejudice. Ever since Judge Story started the "general-law" heresy Federal courts have been assuming more and more to be independent of State interpretation. What ought to be done is for Congress to declare they have no jurisdiction but to enforce as State law what the State declares such to be and to enforce it as State courts enforce it. It is strange that Congressmen elected only by citizens of States should permit anything else. (Editor.)

Mr. PERKY. I have also prepared a brief dealing with the historical facts and the law relating to the subject covered by this bill, which I should like to have appear as part of my presentation of the merits of this measure, and I ask leave to have it printed at this stage of my remarks.

The PRESIDENT pro tempore. It will be so ordered, without objection.

The matter referred to is as follows:

[Memorandum of law in re removal of causes upon the ground of diverse citizenship.]

CONTENTS.

The intent of the proposed law as embodied in this bill is to amend section 28 of the Judicial Code so as to limit the right of removal of causes from State to Federal courts only in causes where it is claimed solely on the ground of diverse citzenship. To accomplish this purpose it is proposed by the terms of this bill to add to section 28 of the existing Judicial Code this language:

"And provided further, That no suit shall be removable solely upon the ground of diversity of citizenship by any party thereto who shall at the time of the institution of said suit have an established place of business within the State where said suit was originally instituted."

The proposed amendment makes no change in the law as it now stands in regard to removal upon the ground of a Federal question or upon the ground of prejudice or local influence.

In the amendment proposed the phrase "an established place of business within the State" is employed. This is the language used by the act of March 3, 1897, in providing where suits for infringement of patent may be brought, in which connection it has been construed by the courts. Having an established place of business in a particular district is thus recognized as justifying departure from the usual rule that a defendant shall be sued only in the district of which he is an inhabitant. By analogy it justifies the principle of the amendment, which is that a person or corporation having an established place of business within a State should submit to suit in the courts of that State.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS.

The jurisdiction of the Federal courts in cases between citizens of different States, whether original or by removal, has its origin in the Constitution itself.

Article III, section 2, of the Constitution provides as follows:

"The judicial power shall extend * * * to controversies * * * between citizens of different States."

Article III, section 1, of the Constitution provides:

"The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."

Article I, section 8, clause 9, of the Constitution provides:

"The Congress shall have power * * * to constitute tribunals inferior to the Supreme Court."

Under these constitutional provisions Congress may limit the jurisdiction of the inferior Federal courts which it may establish to any extent it deems proper. While it has power to confer jurisdiction upon the Federal courts, by removal or otherwise, over controversies between citizens of different States, it is not compelled to do so. In the absence of any sufficient reason or valuable purpose to be subserved, Congress is under no obligation to deprive the State courts of jurisdiction of controversies between citizens of different States, or if there is a reason why some of such controversies should be taken into the Federal courts, which reason does not apply to all such controversies, then Congress may properly limit the jurisdiction of the Federal courts in this class of cases to those controversies in which there is some reason why they should be tried in the Federal courts rather than in the State courts.

In Gaines *v.* Fuentes (92 U. S., 18) the Supreme Court said:

"The Constitution declares that the judicial power of the United States shall extend 'to controversies between citizens of different States' as well as to cases arising under the Constitution, treaties, and laws of the United States; but the conditions upon which the power shall be exercised, except so far as the original or appellate character of the jurisdiction is designated in the Constitution, are matters of legislative direction. * * * In cases where the judicial power of the United States can be applied only because they involve controversies between citizens of different States, it rests entirely with Congress to determine at what time the power may be invoked and upon what conditions—whether originally in the Federal court or after suit brought in the State court; and, in the latter case, at what stage of the proceedings—whether before issue or trial by removal to a Federal court or after judgment upon appeal or writ of error."

It is, of course, perfectly well settled that no State can in any way abridge or impair the jurisdiction of the Federal courts or in any way limit the right of removal of causes into the Federal courts. Any such limitation must be made, if at all, by Congress. (Barrow Steamship Co. *v.* Kane, 170 U. S., 111; Barron *v.* Burnside, 121 U. S., 197.)

From the very beginning, however, Congress has vested the Federal courts with jurisdiction of causes between citizens of different States and authorized the removal into the Federal court of such controversies if originally begun in a State court.

The original judiciary act of 1789 (1 Stat. L., 73) provides that a suit brought in a State court between citizens of different States may be removed into the Federal court. This provision, substantially unchanged, was carried forward into the Revised Statutes and appeared in section 639. It also appears in the judiciary act of 1875, section 2, as amended by the act of 1887–88 (25 Stat. L., 433, in Supp. Rev. Stat., 611). The present Judicial Code, act March 3, 1911, section 24, gives the Federal district court original jurisdiction "where the matter in controversy exceeds, exclusive of interests and costs, the sum or value of $3,000, and * * * is between citizens of different States." Section 28, which is the subject of the proposed amendment, confers the right of removal in such cases.

It is thus seen that the proposed amendment imposes a limitation upon the removal of causes, which is wholly new in Federal legislation.

CONSTITUTIONAL PURPOSE PRESERVED BY PROPOSED AMENDMENT.

In Whelan *v.* N. Y., etc., R. Co. (35 Fed., 858) the court said:

"The clause in the Constitution extending the judicial power of controversies 'between citizens of different States' was intended to secure the citizen against local prejudice, which might injure him if compelled to litigate his controversy with another in the tribunals of a State not his own. This object was the avowed purpose of the constitutional provision at the time of its adoption; and the Supreme Court so declared in Gordon *v.* Longest (16 Pet., 104), where it is said that 'one great object in the establishment of the courts of the United States and regulating their jurisdiction was to have a tribunal in each State presumed to be free from local influence, and to which all who were nonresidents or aliens might resort for legal redress.'"

It will be noted that the present removal act (Judicial Code, sec. 28) expressly provides that a suit involving a controversy between citizens of different States may be removed into the Federal district court "when it shall be made to appear to said district court that from prejudice or local influence he will not be able to obtain justice in such State court," etc.

The original judiciary act of 1789 made no express reference to prejudice or local influence as a ground for removal. This was first brought into the law by the act of July 27, 1866, as amended by the act of March 2, 1867 (14 Stat. L., 306, 558), and was codified in the Revised Statutes in section 639. It was carried forward by the act of 1875 as amended by the act of 1887–88.

As the sole purpose of the Constitution in extending Federal jurisdiction to controversies between citizens of different States was to provide an impartial court, free from prejudice and local influence, and as that purpose is expressly provided for in the present law, and the proposed amendment does not in any way take away the right of removal in cases where such prejudice or local influence exists, there is no longer any reason why other causes should be withdrawn from the jurisdiction of the State courts and removed into the Federal court merely because the parties are citizens of different States. There is only the historical basis for such a provision. It was in the first judiciary act and is therefore in the last. It seems not to have been noted that the constitutional purpose was fully carried out when express provision was made for the removal of causes upon the ground of prejudice or local influence. There being no longer any reason for preserving this broad right of removal in all cases where diverse citizenship exists, every argument showing the abuse which has been made of the right and the hardships which are thus without reason inflicted upon litigants should be given full weight.

The Supreme Court has held that Congress intended by its recent legislation to limit and contract the jurisdiction of the Federal courts:

"The recent acts of Congress have tended more and more to contract the jurisdiction of the courts of the United States which had been enlarged by intermediate acts, and to restrict it more nearly within the limits of the earlier statutes." (Wabash Western Ry. *v.* Brow, 164 U. S., 127.)

"The act of March 3, 1887, chapter 373, corrected by the act of August 13, 1888, chapter 866, was intended, as this court has often recognized, to contract the jurisdiction of the circuit courts of the United States, whether original over suits brought therein or by removal from the State courts." (Hanrick *v.* Hanrick, 153 U. S., 192.)

The proposed amendment is therefore exactly in line with the present purpose of Congress. Certainly no interest can be harmed by taking away a jurisdiction for which no reason exists and which has been greatly abused in practice.

As a further illustration of the tendency and purpose of Congress to restrict the Federal jurisdiction, attention may be called to the fact of the increase in the amount in controversy required as a condition of Federal jurisdiction. Under the judiciary act of 1789 and also under the act of 1875 and down to the act of 1887–88, jurisdiction was conferred upon the Federal courts, either originally or by removal, only where the amount in controversy exceeded the sum or value of $500. By the act of 1887–88 the amount in controversy was required to be $2,000, exclusive of interests and costs, in order to confer jurisdiction on the Federal courts. Under the present judicial code (sec. 24) the amount in controversy was again raised and required to be the sum or value of $3,000 as a condition of Federal jurisdiction, even in cases presenting a Federal question as well as in cases dependent upon the citizenship of the parties.

CORPORATIONS AS CITIZENS FOR PURPOSES OF FEDERAL JURISDICTION.

The legal status of corporations as citizens for the purpose of Federal jurisdiction rests almost entirely upon judge-made law. It is, however, now perfectly well settled that corporations are citizens of the State under whose laws they are created. (Barrow Steamship Co. *v.* Kane, 170 U. S., 103.)

The Federal courts have jurisdiction, either originally or by removal, of suits between citizens of one State and a corporation created by the laws of another State. A foreign corporation sued by a citizen of a State in which it is doing business may, under the existing law and as a matter of right, remove the cause into a Federal court. The vast majority of removals in modern times are cases of this class.

The Federal jurisdiction over suits against a foreign corporation upon the ground of diverse citizenship rests entirely upon a legal fiction. It rests upon a conclusive presumption created by judicial decisions. Thus the Supreme Court said:

"The jurisdiction of the circuit courts over suits between a citizen of one State and a corporation of another State was at first maintained upon the theory that the persons composing the corporation were suing or being sued in its name, and upon the presumption of fact that all those persons were citizens of the State by which the corporation had been created, but that this presumption might be rebutted by plea and proof and the jurisdiction thereby defeated. (Bank *v.* Deveaux, 5 Cranch, 61, 87, 88; Insurance Co. *v.* Boardman, id., 57; Bank *v.* Slocomb, 14 Pet., 60.)

"But the earlier cases were afterwards overruled, and it has become the settled law of this court that, for the purposes of suing and being sued in the courts of the United States, a corporation created by and doing business in a State is, although an artificial person, to be considered as a citizen of the State as much as a natural person; and there is a conclusive presumption of law that the persons composing the corporation are citizens of same State with the corporation." (Barrow *v.* Kane, 170 U. S., 103.)

Thus it appears that a legal fiction and a judge-made conclusive presumption, which presumption in 9 cases out of 10 is not in accordance with the actual facts, is the sole basis upon which foreign corporations are permitted to remove their controversies with citizens of a State into which they have voluntarily come for the purpose of doing business from the courts of that State into a Federal court, with all the resulting expense, inconvenience, and hardship which frequently exists.

Further, as already shown under a previous head, this abuse is permitted without the excuse of any worthy purpose to be subserved. The purpose of the proposed amendment is to put an end to just this thing. It is open to very serious doubt whether the framers of the Constitution contemplated that corporations might sue and be sued in the Federal courts, or remove suits thereto from State courts merely by reason of the locality of their incorporations or the citizenship of their stockholders. In an early case this jurisdiction was expressly denied, the court saying:

"The Constitution takes no notice of corporate bodies in enumerating the cases in which this court shall exercise jurisdiction upon circumstances of the persons. A corporation can not with propriety be denominated a citizen of any State, so that the right to sue in this court, under the Constitution, can only be extended to corporate bodies by a liberality of construction which we do not feel ourselves at liberty to exercise. (Bank of United States *v.* Deveaux, 2 Fed. Cas., No. 916, p. 692.)

The foregoing decision was reversed by the Supreme Court in Fifth Cranch, page 61, and Chief Justice Marshall wrote the opinion. This reversal was upon the ground that the suit should be deemed the suit of the stockholders of the corporation litigating in the name of the corporation, and that there was a prima facie presumption that these stockholders were citizens of the State where the corporation was incorporated. This presumption could be overcome by proof that such was not the fact, thereby defeating the Federal jurisdiction. Chief Justice Marshall said:

"A corporation aggregate is certainly not a citizen, and consequently can not sue or be sued in the courts of the United States, unless the rights of the members in this respect can be exercised in their corporate name."

The doctrine sustained by Chief Justice Marshall was that Federal jurisdiction did not exist unless diversity of citizenship exists as between the defendant and all the members of the corporation, and in this sense it was for a time followed by the Federal courts. (Commercial Bank *v.* Slocomb, 14 Pet. (U. S.), 60.)

This doctrine was subsequently overruled, and the law now is that the members of a corporation suing in its corporate name are, for the purposes of jurisdiction, conclusively presumed to be citizens of the State which created it. (Louisville, etc., *v.* Letson, 2 How., 497; National Steamship Co. *v.* Tuckman, 106 U. S., 118; Barrow Steamship Co. *v.* Kano, 170 U. S., 100.)

There would seem to be no substantial ground for objection to the proposed amendment, which aims to put an end to a legal fiction which is seldom, if ever, in accord with the actual facts, and which has no vital, useful purpose, but, on the contrary, has been made the means of grave abuses, often amounting to a denial of justice.

It may be added that corporations are certainly not citizens within the meaning of the constitutional definition of citizens, which is as follows:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside."

FOURTEENTH AMENDMENT, SECTION 1.

As an illustration of the abuse of the privilege of removal accorded to foreign corporations, I call attention to the recent decision of the Supreme Court in the case of Southern Realty Investment Co. *v.* Walker (211 U. S., 603). In this case a foreign corporation was created for the very purpose of conferring jurisdiction upon the Federal court in controversies between citizens of the same State. The Supreme Court looked through the corporate organization, held it to be a sham, and remanded the case to the State courts, although all corporate formalities had been observed.

ABUSE OF PRESENT REMOVAL PRIVILEGE.

Every lawyer knows that the removal of a cause results in more or less expense, delay, and inconvenience to the complainant. Oftentimes where the districts are large and the distances great the expense and inconvenience is practically prohibitive, especially to poor litigants. The abuses along this line are graphically set forth in an article in the Central Law Journal for March 24, 1911. (72 Central Law Journal, p. 218.)

So long as mere diversity of citizenship is an independent ground for removal and may be availed of as a matter of right, defendants will avail themselves of it for the purpose of securing delay and imposing burdens upon the complainant, thus discouraging and often preventing the prosecution of meritorious suits. Where the price of justice is too high it may be foregone.

Another great abuse of the privilege of removal lies in the fact that the law administered in the Federal courts is often different to the law administered in the State courts as applicable to the same state of facts. When a person or a corporation voluntarily comes into a State to do business there with its citizens, it should be subject to the laws of the State as declared by the courts of that State and be subject to the same laws as are the citizens of that State. The nonresident should not have an option, as he now has in many cases, to abide by the State law and litigate in the State courts if it is to his advantage to do so, or to remove his case and have a different rule applied by the Federal courts if that course is most advantageous to his position.

Of course, under the United States Revised Statutes, section 721, it is provided that—

"The laws of the several States * * * shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply."

In theory this is quite satisfactory as far as it goes, but in practice it does not mean nearly what it says. In applying State statutes and constitutional provisions the Federal courts will follow the latest decision of the highest State court. The decisions of inferior State courts are not binding upon the Federal courts. Until a State statute has been authoritatively construed by the highest State court the Federal court will exercise its own independent judgment as to its construction and constitutionality. Moreover, in many cases where the Federal courts have adopted a construction of State laws they will cling to their own interpretation, notwithstanding that a different interpretation may thereafter be adopted by the State courts.

In equity cases the principles of equity jurisprudence are administered by the Federal courts uniformly throughout all the States, wholly unaffected by State laws and decisions, and this equity jurisdiction can not be impaired by the laws of any State. Most important of all on questions of general jurisprudence as distinguished from matters of

local law the Federal courts in the absence of express statutes exercise their own judgment, uncontrolled by the decisions of the State courts. The vast mass of litigated transactions falls under this head. (See article "United States courts," 22 Ency. of Pl. and Pr., pp. 324–336.)

The proposition that all persons doing business within a State should be subject to the laws of that State as enacted by the legislature of that State and construed by the courts of that State, except so far as such laws may deprive them of privileges secured to them by the Federal Constitution, does not seem open to doubt. That proposition, however, does not prevail to-day, and mainly because of the present removal privilege upon the ground of mere diversity of citizenship.

Mr. PERKY. As a practical illustration of the abuses at which this bill strikes, the United States court in Idaho holds its sessions at four points in the State—at Moscow and Coeur d'Alene, in northern Idaho; Boise, in southwestern Idaho; and Pocatello, in southeastern Idaho. A citizen of the State who thinks he has a meritorious cause of action seeks redress against some corporation organized under the laws of some sister State, which may have one or many places of business in the State, and practically all of whose stockholders may be residents of the State of Idaho. He files his suit in the ordinary way against his adversary, and if the amount in controversy is $3,000 or more, the corporation sued may remove the suit to the Federal court, which may sit 250 or more miles from the point where the plaintiff lives and where the controversy arose.

Under the practice and law of Idaho, as is the case in the majority of jurisdictions in the Union, the parties to the suit are obliged, when required by the witnesses, to advance fees and mileage. It often happens that litigants with cases entitling them to relief either advance these fees with great hardship or are in such circumstances as not to be able to do so at all. This often results in forced, unfair settlements, or the abandonment of suits, and often in the bringing of suits for amounts inadequate to compensate the plaintiff or redress his injuries, in order that the amount in controversy may be kept below the sum fixed by law permitting the removal of causes from State to Federal courts.

The law as it now stands fosters in many cases a partial or complete denial of justice, and thus tends to undermine society, to the extent that this practice of removal hampers our courts in the administration of their functions to redress wrongs.

The removal in most cases amounts to this, "that the nonresident gains not equality with but an advantage over his adversary."

Justice should be speedy. The method of securing redress should be as free and direct as orderly procedure will admit. The forum where it is administered should be convenient and easily accessible to litigants. This bill, I believe, is a long step in the right direction.

The PRESIDENT pro tempore. The bill and accompanying papers will be referred to the Committee on the Judiciary.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. GALLINGER submitted an amendment proposing to appropriate $66,000 to enable the Secretary of State to return to such contributors as may file their claims the money raised to pay the ransom for the release of Mrs. Ellen M. Stone, an American missionary to Turkey, etc., intended to be proposed by him to the general deficiency appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

He also submitted an amendment proposing to appropriate $66,000 to enable the Secretary of State to return to such contributors as may file their claims the money raised to pay the ransom for the relief of Miss Ellen M. Stone, and American missionary to Turkey, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. JONES submitted an amendment proposing to increase the appropriation for investigations of methods for wood distillation and for the preservative treatment of timber, etc., from $100,000 to $170,000, intended to be proposed by him to the Agriculture appropriation bill, which was referred to the Committee on Agriculture and Forestry and ordered to be printed.

He also submitted an amendment proposing to increase the appropriation to investigate and encourage the adoption of improved methods of farm management and farm practice, etc., from $375,000 to $600,000, intended to be proposed by him to the Agriculture appropriation bill, which was referred to the Committee on Agriculture and Forestry and ordered to be printed.

He also submitted an amendment authorizing the Secretary of Agriculture to sell at actual cost to homestead settlers and farmers for their domestic use mature dead and down timber in national forests, etc., intended to be proposed by him to the Agriculture appropriation bill, which was referred to the Committee on Agriculture and Forestry and ordered to be printed.

Mr. SMITH of Georgia. I offer an amendment intended to be proposed to the Post Office appropriation bill. The amendment is very brief, and I ask that it be read, printed, and referred to the Committee on Post Offices and Post Roads.

There being no objection, the amendment was read and referred to the Committee on Post Offices and Post Roads, as follows:

Amendment intended to be proposed by Mr. SMITH of Georgia to the bill (H. R. 27148) making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1914, and for other purposes, viz: On page 27, after line 12, insert the following:

That hereafter fourth-class mail matter shall embrace seeds, cuttings, bulbs, roots, scions, and plants, and the provision contained in the act approved August 24, 1912, continuing said articles under the provisions fixed by section 482 of the Postal Laws and Regulations is hereby repealed.

That hereafter books shall be carried as fourth-class mail.

Mr. SMITH of Georgia submitted an amendment proposing to appropriate $8,000 for improving Fancy Bluff Creek, Ga., connecting Turtle River and Brunswick Harbor with Little Satilla River, etc., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

Mr. SWANSON submitted an amendment providing for the removal of the shoal at the mouth of the Blackwater River, Va., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

He also submitted an amendment proposing to appropriate $82,000 for dredging and widening the approach to the western branch of the Elizabeth River, Va., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

Mr. BANKHEAD submitted an amendment providing for a continuance of the personnel of the membership of committees and commissions created and provided for in sections 1 and 8 of the Post Office Appropriation act of June 30, 1913, etc., intended to be proposed by him to the Post Office appropriation bill, which was referred to the Committee on Post Offices and Post Roads and ordered to be printed.

Mr. SHIVELY submitted an amendment proposing to appropriate $1,000 to pay O. M. Enyart for moneys paid and expended by him for the purchase of the copyright of Ben: Perley Poore's Political Register and Congressional Directory of the United States of America, 1776 to 1878, etc., intended to be proposed by him to the general deficiency appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

CONNECTICUT RIVER DAM.

Mr. JONES. I submit an amendment intended to be proposed by me to the bill (S. 8033) known as the Connecticut River Dam bill, which I ask may lie on the table and be printed.

Mr. BRANDEGEE. I ask that the amendment be printed in the RECORD.

There being no objection, the amendment was ordered to lie on the table and to be printed in the RECORD, as follows:

Amendment intended to be proposed by Mr. JONES to the bill (S. 8033) to authorize the Connecticut River Co. to relocate and construct a dam across the Connecticut River above the village of Windsor Locks, in the State of Connecticut.

After the word "used," in line 23, on page 2, strike out down to and including the word "therewith," in line 25, and insert in lieu thereof the following:

"To reimburse the Government for the cost of surveys, inspection, and similar expenses, and for the purpose of protecting the navigation of the Connecticut River in the interests of the public."

PHYSICAL VALUATION OF RAILROADS.

Mr. CLAPP submitted the following resolution (S. Res. 449), which was read and referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Whereas the Senate Committee on Interstate Commerce is considering H. R. 22593, an act to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, by providing for physical valuation of the property of carriers subject thereto and securing information concerning their stocks and bonds and boards of directors: Therefore be it

Resolved, That said Interstate Commerce Committee of the Senate is hereby authorized and directed to inquire into the matters embraced in said H. R. 22593 at the earliest practicable date, and for that purpose they are authorized to send for papers and persons, administer oaths, to summon and compel the attendance of witnesses, to conduct hearings and have reports of same printed for use, and in addition to the usual fees allowed witnesses to pay a reasonable compensation to experts appearing before the said committee; and any expenses in connection with such hearings shall be paid out of the contingent fund of the Senate upon vouchers to be approved by the chairman of the committee.

Mr. CLARKE of Arkansas subsequently, from the Committee to Audit and Control the Contingent Expenses of the Senate, to which was referred the foregoing resolution, reported it without amendment, and it was considered by unanimous consent and agreed to.

TREATIES, CONVENTIONS, ETC. (S. DOC. NO. 1063).

Mr. LODGE (for Mr. CULLOM) submitted the following resolution (S. Res. 448), which was read, considered by unanimous consent, and agreed to.

Resolved, That 500 copies additional of the supplement to the compilation entitled "Treaties, conventions, international acts, and protocols between the United States and other powers, 1776 to 1909," including treaties, conventions, important protocols, and international acts to which the United States may have been a party from January 1, 1910, to March 4, 1913, inclusive, be printed as a Senate document.

COMPENSATION OF SENATORS.

Mr. O'GORMAN submitted the following resolution (S. Res. 452), which was read and referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Secretary of the Senate be, and he hereby is, authorized and directed to pay, from the contingent fund of the Senate, to the Hon. K. I. PERKY the sum of $267.12, being the compensation of a Senator of the United States for 13 days, January 25 to February 6, 1913, during which he served as Senator from the State of Idaho; to the Hon. NEWELL SANDERS the sum of $184.93, being the compensation of a Senator of the United States for 9 days, January 25 to February 2, 1913, during which he served as Senator from the State of Tennessee; and to Hon. R. M. JOHNSTON the sum of $82.19, being the compensation of a Senator of the United States for 4 days, January 30 to February 2, 1913, during which he served as Senator from the State of Texas.

MEMORIAL CEREMONIES FOR THE LATE VICE PRESIDENT.

Mr. ROOT submitted the following resolution (S. Res. 451), which was read, considered by unanimous consent, and agreed to:

Resolved, That the Senate extend to the Speaker and the Members of the House of Representatives an invitation to attend the exercises in commemoration of the life, character, and public services of the late JAMES S. SHERMAN, Vice President of the United States and President of the Senate, to be held in the Senate Chamber on Saturday, the 15th day of February next at 12 o'clock noon.

MISSISSIPPI RIVER BRIDGES AT MINNEAPOLIS, MINN.

Mr. NELSON. I move to reconsider the votes by which the following bills were passed on the 3d instant:

A bill (S. 8248) to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn.;

A bill (S. 8249) to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn.;

A bill (S. 8250) to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn.; and

A bill (S. 8251) to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn.

The motion to reconsider was agreed to.

Mr. NELSON. I ask that the bills be placed on the calendar.

The PRESIDENT pro tempore. Without objection, the bills will be returned to the calendar.

INTERNATIONAL COMMISSION OF JURISTS (H. DOC. NO. 1343).

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which was read, and, with the accompanying paper, referred to the Committee on the Judiciary and ordered to be printed:

To the Senate and House of Representatives:

I transmit herewith a letter from the Secretary of State inclosing a report, with accompanying papers, of the delegates of the United States to the International Commission of Jurists, which met at Rio de Janeiro in June last.

WM. H. TAFT.

THE WHITE HOUSE, *February 5, 1913.*

(Report of delegates accompanies the message to the House of Representatives.)

IMPORTS AND EXPORTS (H. DOC. NO. 1340).

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which was read and referred to the Committee on Finance and ordered to be printed:

To the Senate and House of Representatives:

By joint action of the Department of Commerce and Labor and the Treasury Department, committees of those two departments have recently made a careful investigation of the methods of preparing the statistics of the imports and exports of the United States.

These committees have unanimously recommended that the laws relating to the preparation of shippers' manifests be amended in such manner as to compel the preparation by exporters of accurate and complete lists in regard to merchandise sent out of the United States. Without such amended laws these committees deem that it is impossible for the customs officers to obtain with accuracy the figures of our export trade. The existing law regarding statistical returns of exports by sea was enacted in 1821, and, naturally, fails to meet conditions existing at the present time, when methods of communication and transportation, classes of articles entering international commerce, places of production of such articles, and the demands of business for information in reference thereto have greatly changed. A large proportion of the merchandise now being exported originates in the interior of the country and is of such character and variety that a proper description thereof can not be made at the port of exportation. It is recommended, therefore, that a measure be enacted which will remedy the unsatisfactory conditions in our export statistics.

This new measure should provide that persons forwarding merchandise from interior points for exportation shall supply to the transportation company receiving such merchandise a manifest similar in general form to that required at the port of exportation, which manifest shall be conveyed by the transportation company to the port of exportation and delivered to the collector of customs.

For any omission from or incorrect description of the merchandise in any manifest, whether originating in the interior or at the port of exportation, as to kind, quantity, or value, the owner, shipper, or consignor, or agent of either, should be made liable to a fine of $50, unless it be shown that such omission was due to a mere clerical error. If it be shown that the incorrect statement has been willfully or fraudulently made, the person responsible therefor should be deemed guilty of a misdemeanor and rendered liable to fine or imprisonment.

The bill should also provide a penalty for the failure of the transportation company to procure from the exporter, at the original place of shipment, the manifest noted above, and likewise a penalty for failure to transmit it to the collector of customs at the port of exportation, or for failure to deliver it to any other transportation company to which it may deliver the merchandise en route, and the company so receiving should be also required under penalty to forward to the collector of customs the said manifest.

The bill should prohibit, under penalty for violation, the disclosure by any officer, employee, or other representative of a common carrier of any information regarding the kind, quantity, value, destination, or consignee of any of the merchandise carried by it for exportation and described in the manifest above referred to.

It is believed that a measure embodying these suggestions into law would fully meet the objections now offered to the proposition that interior shippers shall supply manifests of the goods forwarded for exportation. The chief objection has been that information regarding their business might be disclosed by employees of the common carriers transporting the merchandise and receiving statements as to its character, valuation, destination, and the consignee. The plan, if carried into effect, would, it is believed, protect the original exporter against disclosure of his business, give to the customs officers at the port of exportation sufficient information to enable them to properly describe and value the merchandise, and also assure much greater accuracy as to the true value of the merchandise being exported.

I suggest, as equally important, an amendment to section 4197 of the Revised Statutes of the United States, making the law conform to the present practice by which vessels are permitted to file a supplementary manifest within four business days after the clearance of the vessel, a practice without authority of law but sanctioned by the Customs Regulations (art. 128).

The provisions of section 4197 of the Revised Statutes requiring the master of the vessel to file a complete manifest of the cargo before a clearance is granted, a measure enacted before the utilization of steam power in ocean traffic and prior to the transaction of business with the aid of telegrams, cablegrams, and telephonic communications, can not be carried out under present methods of commercial transactions. To demand a strict compliance with the requirements of the statute in this particular would congest traffic, delay travel and the transportation of the foreign mails, paralyze business, and jeopardize our international commerce. It is found that there has been no enforcement of this part of the statute at the larger ports of the United States for upward of 30 years. It is believed that the law for the clearance of vessels and filing the cargo manifests should be in harmony with the law requiring the presentation of shippers' manifests. The amendment proposed to the law would be justified by many years' experience and careful consideration of this important subject. It would add no burdens to the duties of steamship companies. Instead, it would simplify the preparation of the manifest and legalize the present custom of filing supplementary manifests. It should fix the same penalty ($500) for failure to file a manifest and obtain a clearance

for a vessel, and should provide a penalty of $50 for neglect of entering merchandise in the manifest. It should grant the same period for filing a supplementary manifest as the current practice under article 128 of the Customs Regulations.

The recommendations of this message have received the approval of the two departments whose work and functions will be most affected by them—the Treasury Department and the Department of Commerce and Labor.

If a bill or bills embodying the suggestions of this message would be useful to the Congress, or to any committees thereof considering the subject, they will be forwarded on request.

WM. H. TAFT.

THE WHITE HOUSE, *February 4, 1913.*

HURON PLACE CEMETERY, KANSAS CITY, KANS.

The PRESIDENT pro tempore laid before the Senate the amendments of the House of Representatives to the bill (S. 3952) for the purpose of repealing so much of an act making appropriations for the current and contingent expenses of the Indian department for fulfilling treaty stipulations with various Indians located in Kansas City, Kans., providing for the sale of a tract of land located in Kansas City, Kans., reserved for a public burial ground under a treaty made and concluded with the Wyandotte Tribe of Indians on the 31st day of January, 1855, said section of said act relating to the sale of said land be, and the same is hereby, repealed, which were, on page 2, line 2, after "six," strike out all down to and including "land" in line 7, and insert:

As reads as follows:

"That the Secretary of the Interior is hereby authorized to sell and convey, under such rules and regulations as he may prescribe, the tract of land located in Kansas City, Kans., reserved for a public burial ground under a treaty made and concluded with the Wyandotte Tribe of Indians on the 31st day of January, 1855. And authority is hereby conferred upon the Secretary of the Interior to provide for the removal of the remains of persons interred in said burial ground and their reinterment in the Wyandotte Cemetery at Quindaro, Kans., and to purchase and put in place appropriate monuments over the remains reinterred in the Quindaro Cemetery. And after the payment of the costs of such removal, as above specified, and the costs incident to the sale of said land, and also after the payment to any of the Wyandotte people, or their legal heirs, of claims for losses sustained by reason of the purchase of the alleged rights of the Wyandotte Tribe in a certain ferry named in said treaty, if, in the opinion of the Secretary of the Interior, such claims or any of them are just and equitable, without regard to the statutes of limitation, the residue of the money derived from said sale shall be paid per capita to the members of the Wyandotte Tribe of Indians who were parties to said treaty, their heirs, or legal representatives."

And to amend the title so as to read: "An act repealing the provision of the Indian appropriation act for the fiscal year ending June 30, 1907, authorizing the sale of a tract of land reserved for a burial ground for the Wyandotte Tribe of Indians in Kansas City, Kans."

Mr. CURTIS. I move that the Senate concur in the amendments of the House.

The motion was agreed to.

HOUSE BILLS REFERRED.

H. R. 11478. An act to quiet title and possession with respect to a certain unconfirmed and located private land claim in Baldwin County, Ala., in so far as the records of the General Land Office show said claim to be free from conflict, was read twice by its title and referred to the Committee on Private Land Claims.

H. R. 27323. An act to provide for refund or abatement under certain conditions of penalty taxes imposed by section 38 of the act of August 5, 1909, known as the special excise corporation-tax law, was read twice by its title and referred to the Committee on Finance.

H. R. 27875. An act authorizing the President to convey certain land to the State of Texas was read twice by its title and referred to the Committee on Public Lands.

H. R. 28093. An act to amend the general pension act of May 11, 1912, was read twice by its title and referred to the Committee on Pensions.

H. R 28094. An act to amend section 96, chapter 5, of the act of Congress of March 3, 1911, entitled "The Judicial Code," was read twice by its title and referred to the Committee on the Judiciary.

CONNECTICUT RIVER DAM.

Mr. BRANDEGEE. Mr. President, I ask unanimous consent for the entering of the order which I send to the desk. I will say, before it is read, that the Senator from Idaho [Mr. BORAH], who objected to the unanimous-consent agreement of a similar character yesterday, told me this morning that he would consent to the date which I have now substituted, and it is at his suggestion that I send the order to the desk.

The PRESIDENT pro tempore. The request will be read.

The Secretary read as follows:

It is agreed by unanimous consent that on Tuesday, February 11, 1913, immediately upon the conclusion of the routine morning business, the Senate will proceed to the consideration of Senate bill 8033, calendar No. 1001, authorizing the construction of a dam across the Connecticut River, and before adjournment on that legislative day will vote upon any amendment that may be pending, all amendments that may be offered, and upon the bill through regular parliamentary stages to its final disposition.

This agreement shall not interfere with appropriation bills or conference reports, nor with the memorial services on Saturday, February 15, nor the meeting of the two Houses of Congress on February 12.

Mr. GALLINGER. What about the present unanimous-consent agreement?

Mr. BRANDEGEE. The Senator from New Hampshire now asks about the existing unanimous-consent agreement that is already upon the calendar. That will have expired before the time this one arrives.

Mr. GALLINGER. That is all right.

Mr. LODGE. I desire to ask the Senator from Connecticut if he would not put in an hour for voting, as was done in other cases, instead of "the legislative day"?

Mr. BRANDEGEE. What did the Senator ask—that the vote be taken on the calendar day?

Mr. LODGE. Yes; the calendar day.

Mr. BRANDEGEE. Well, there is objection to that.

Mr. LODGE. I see.

Mr. BRANDEGEE. Senators want more opportunity to discuss the measure.

Mr. ROOT. With all these exceptions, I think it will be impossible to fix an hour.

Mr. BRANDEGEE. I think it would be impossible, Mr. President.

The PRESIDENT pro tempore. Is there objection to the request for unanimous consent which has just been read from the desk?

Mr. JONES. I desire to ask if it is understood that the Senator from Ohio [Mr. BURTON] is to proceed to a discussion of the bill to-day?

Mr. BRANDEGEE. It is so understood by me, because the Senator from Ohio stated that he was going to make some remarks.

Mr. SMITH of Arizona. A parliamentary inquiry, Mr. President.

The PRESIDENT pro tempore. The Senator from Arizona will state it.

Mr. SMITH of Arizona. I want to know if this is a proceeding by unanimous consent? I have not heard unanimous consent given yet, but I have observed quite a number of interruptions.

The PRESIDENT pro tempore. It has not been.

Mr. JONES. I should like to ask the Senator from Ohio whether he intends to proceed to discuss the bill?

The PRESIDENT pro tempore. The Chair will state for the information of the Senator from Arizona that it is the general practice of the Senate whenever unanimous consent is asked by general acquiescence for reasons pro and con to be given.

Mr. SMITH of Arizona. I understand that. I only want to learn the rules. I tried to make a parliamentary inquiry, and I am on the floor yet for that purpose.

The PRESIDENT pro tempore. The Senator has not the floor, unless he rises to a point of order, except by consent of the Senator from Connecticut.

Mr. SMITH of Arizona. Then I rise to a point of order.

The PRESIDENT pro tempore. The Senator will state it.

Mr. SMITH of Arizona. I am trying to learn these technical rules.

The PRESIDENT pro tempore. That is not a point of order.

Mr. SMITH of Arizona. I want to see universal application of the rules, and when I understand them I will conform to them as best I can.

The PRESIDENT pro tempore. The Senator is not now rising to a point of order.

Mr. SMITH of Arizona. I am rising to a point of order.

The PRESIDENT pro tempore. The Senator will state it.

Mr. SMITH of Arizona. My point of order is that there is a debate proceeding without the request for unanimous consent having been objected to.

The PRESIDENT pro tempore. There is an application for unanimous consent pending.

Mr. SMITH of Arizona. Yes, sir; but you have not ruled on that; no one has objected to unanimous consent; debate is proceeding, and it is necessary to have the unanimous consent that the debate should proceed.

The PRESIDENT pro tempore. Does the Senator object?

Mr. SMITH of Arizona. I think the Chair does not catch my point of order.

The PRESIDENT pro tempore. What is the Senator's point of order?

Mr. SMITH of Arizona. The point of order is that we are proceeding out of order.

The PRESIDENT pro tempore. Does the Senator from Arizona call the Senator from Washington to order?

Mr. SMITH of Arizona. I call Senators to order under the ruling of the Chair. Unanimous consent should be granted or not granted before anything can be said about it.

The PRESIDENT pro tempore. Very well. The Senator's point of order is sustained. The question is upon agreeing to the proposed unanimous-consent agreement, which has been read.

Mr. JONES. I want to ask the Senator from Ohio if he expects to proceed to a discussion of the bill?

The PRESIDENT pro tempore. The Senator from Arizona objects to the Senator from Washington being heard.

Mr. BRANDEGEE. I ask unanimous consent that the Senator from Washington may be allowed to make a brief statement.

The PRESIDENT pro tempore. Is there objection to the Senator from Washington proceeding?

Mr. CLARKE of Arkansas. Mr. President, I think that we are about to get into a situation here that will trouble us hereafter in a way which will embarrass us. It is part of the right to ask for unanimous consent that those who favor it and those who object to it may have a right to state the reasons for and against it. That is just as much a part of the request as any other feature of it, and I would not want to have it understood that every time anything of that kind occurred it had to be by unanimous consent and that the entire situation might be disturbed by a single objection.

I think the point of order raised by my friend from Arizona [Mr. SMITH] was not well taken. I think when the Senator from Connecticut [Mr. BRANDEGEE] asked for unanimous consent that the very request involved a unanimous consent that the reasons for and against it might be given. I trust the ruling of the Chair will be such as will not put us at the mercy of a single Senator whenever a request for unanimous consent is made.

Mr. SMITH of Arizona. I certainly concur in that.

The PRESIDENT pro tempore. The Senator from Arizona has entirely mistaken the situation. The difference between the case now under consideration by the Senate and the situation when he formerly addressed the Chair is that the Senator from Arizona then undertook to discuss the case on the merits when the question was whether a resolution should be taken up for consideration, which is a very different matter.

Mr. CLARKE of Arkansas. I desire to say to the Chair that I did not have reference to any particular transaction which had preceded this instance.

The PRESIDENT pro tempore. The Chair will state that the rule of the Senate is that upon a motion to proceed to the consideration of any matter it shall be decided without debate; but the Chair did state that it was the universal practice of the Senate, whenever a question was submitted as to whether or not unanimous consent should be granted, that there should be an interchange of opinion, not on the merits of the question, but upon the particular request for the unanimous consent.

Mr. SMITH of Arizona. If the Chair will pardon me, I was not attempting to address the Senate on the merits. I was asking for what I got and what you can always get from the Senator from New York. I was seeking information, so that I would know whether or not I would object. When I found that it was impossible for me even to ask a question, I wanted to know if that was to be the rule of the Senate.

I am aware of the difficulty in which, as the Senator from Arkansas suggests, we would be thrown if a request for unanimous consent had to be determined on the mere presentation of the matter without Senators having knowledge on the subject, and, therefore, not knowing whether to object or not. It was for that reason I asked for information. That was the attitude I was assuming before the Chair at that time. That is all I have to say about it.

The PRESIDENT pro tempore. The Chair does not deem it proper for the Presiding Officer to enter into an argument with a Senator on the floor.

Mr. CLARKE of Arkansas. Mr. President, I merely want to put the matter into such attitude that the Senate can settle it, for I deem it a very material point. The Chair has made a ruling that when a request is made for unanimous consent nothing can be said concerning it except by another unanimous consent. I want to take an appeal from that ruling.

The PRESIDENT pro tempore. The Chair did not so rule. The Chair simply ruled that the objection of the Senator from Arizona was sufficient to prevent a discussion of the question. The Chair did suggest the fact, and repeats it, that the universal practice of the Senate, never before challenged within the knowledge of the Chair, has been for an exchange of views whenever an application for unanimous consent has been made.

Mr. CLARKE of Arkansas. That universal practice has become part of the rule; it is an interpretation of it. It is acted upon, and it is of itself a part of the rule that allows a Senator to ask for unanimous consent; and I think that we ought to maintain it as a part of the rule. I do not think that the right to explain the situation incident to a request for unanimous consent should only proceed by another unanimous consent; otherwise, we would never know why a unanimous-consent agreement is desirable; we would be compelled to vote in the dark, and it would defeat the very object that we have in making such requests.

If the Chair will permit me now to appeal from the ruling that he made on the point of order of the Senator from Arizona, I will enter that appeal. I think that we ought now to record the judgment of the Senate, that when a request is made for unanimous consent to fix a date to vote upon a certain proposition, for instance, the reasons why that consent should be given or withheld are within the request without an additional consent.

The PRESIDENT pro tempore. The Chair has stated that that has been the universal practice of the Senate.

Mr. CLARKE of Arkansas. Then, the point of order raised by the Senator from Arizona was not well taken; and the Senator from Connecticut and the Senator from Washington had each the right to state why he thought that consent should be given or withheld without appealing to the Senate for unanimous consent to do so.

I only want one of our most valuable rules preserved, because if the ruling of the Chair, as I understand it—to be sure, I am not imputing to the Chair a meaning that he did not intend to convey—but if the ruling stands as made, when a request is hereafter made for unanimous consent, for instance, to fix a date to vote upon an important public measure, no Senator will be permitted to say a word if a single Senator objects to debate, and we will then be forced to vote in the dark or forced to dispose of a matter of very great concern without the benefit of the enlightening course of debate, as it takes place here. I want it understood—and I think it is the judgment of the Senate that it shall be understood—that when a request for unanimous consent is made, the right to make such explanatory remarks as relate to that particular question, but not to the merits of the main proposition, shall be allowed as a matter of course.

Mr. LODGE. Mr. President, on the point of order that has been raised I think there can be no possible question that the universal practice has been as stated by the Chair. It is also obvious that it can only be a universal practice, because at this moment I have it in my power under the rules to put an end to the matter by demanding the regular order.

Mr. BRANDEGEE. Or by objecting.

Mr. LODGE. Or by objecting. So that the Senate is entirely protected against requests for unanimous consent being used as a means for protracting or delaying business. The protection is absolute, but the practice, when a unanimous-consent agreement is asked for, is as the Senator from Arkansas [Mr. CLARKE] has stated. We can not possibly agree to a request for unanimous consent to fix a time in the future to take a vote, which affects all the business of the Senate, without understanding its purpose and effect. I do not mean by that that we should discuss the merits of the question, for that is a different thing; but we ought to know the surrounding circumstances, if the consent is to be granted; and if not to be granted, it can be cut off by one objection.

The PRESIDENT pro tempore. The Chair thinks the view presented by the Senator from Arkansas [Mr. CLARKE] is the correct one, and, with the permission of the Senate, will withdraw the ruling. The Chair will state that the ruling was really made in the interest of time and to end discussion.

Mr. CLARKE of Arkansas. Then, we understand that the point of order raised by the Senator from Arizona is not well taken.

The PRESIDENT pro tempore. The point of order is not well taken. The Chair repeats that the Chair so ruled in the interest of time.

Mr. SMITH of Arizona. If the Chair will bear with me in patience, I want to indicate to the Chair that I have no feeling in this matter whatever——

The PRESIDENT pro tempore. The Chair of course so understands.

Mr. SMITH of Arizona. My only desire was to ascertain whether this was to be the rule or not, for in another parliamentary body in which I have served the common statement is, "Reserving the right to object, I should like to inquire," and so forth, so that information may be had as to what is the request. I thought that practice prevailed here, and that was the reason I made the point of order. I had no object and no feeling other than that.

The PRESIDENT pro tempore. The application of the Senator to address the Senate, reserving the right to object, was not made upon the question of granting a unanimous consent, but was made upon the question of present consideration of a proposed measure, which is an entirely different matter.

Mr. JONES. Mr. President——

The PRESIDENT pro tempore. The Senator from Washington.

Mr. JONES. I simply want to inquire of the Senator from Ohio if he expects to proceed with the discussion of the bill to-day?

Mr. BURTON. In answer to the interrogatory of the Senator from Washington, I will state that it is my desire to proceed with some remarks on this bill immediately after the disposition of the request for unanimous consent—that is, if I have opportunity.

Mr. JONES. With that understanding, I shall make no objection to the request.

Mr. CLARKE of Arkansas. Do I understand that the morning business has been closed?

The PRESIDENT pro tempore. It has not.

Mr. CLARKE of Arkansas. Is there anything before the Senate?

The PRESIDENT pro tempore. The Senator from Connecticut [Mr. BRANDEGEE] has presented an application for unanimous consent. Is there objection to the unanimous-consent request, which has been read from the desk? The Chair hears none, and it is so ordered.

INTERSTATE SHIPMENT OF LIQUORS.

Mr. PAYNTER. Mr. President, I desire to give notice that to-morrow, February 6, 1913, after the conclusion of the routine morning business, I shall address the Senate on the so-called Kenyon bill relative to interstate commerce in intoxicating liquors.

CONNECTICUT RIVER DAM.

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. 8033) to authorize the Connecticut River Co. to relocate and construct a dam across the Connecticut River above the village of Windsor Locks, in the State of Connecticut.

Mr. BURTON. Mr. President, in pursuance of the notice given yesterday, I desire to address the Senate in favor of Senate bill 8033, Order of Business No. 1001.

There is much anxiety for the passage of this bill in the States of Massachusetts and Connecticut. It contemplates a public improvement which assumes national importance, relating to the development of navigation, and incidentally of water power, in the Connecticut River.

Mr. BANKHEAD. Mr. President, I rise to a point of order.

The PRESIDENT pro tempore. The Senator will state his point of order.

Mr. BANKHEAD. There is so much confusion in the Chamber that we are unable to hear the Senator from Ohio.

The PRESIDENT pro tempore. The point is well taken. The Senate will please be in order. The Senator from Ohio will proceed.

Mr. BURTON. I am satisfied that there would be no objection to the bill in the Senate except for the opinion of certain Senators that it creates a precedent which may be embarrassing to them. It contains two or three clauses which, as they allege, establish a rule which operates as an infringement on the rights of States and individuals and is a departure from the settled policy of the Government.

I shall endeavor to show, on the contrary, that the precedent established will not be embarrassing; that the bill does not infringe upon the rights of States or individuals; and that, so far from being a departure from the established policy of the Government, it is in line with it and confirms a salutary method of improving the rivers of the country. I shall also endeavor to show that, even conceding all this, exceptional circumstances exist in this case which differentiate it from other propositions here pending.

It is desirable at the very outset to explain the purpose and provisions of the bill. It gives authority to the Connecticut River Co. to construct a dam in the Connecticut River above Hartford. The river is now navigable for a distance of 52 miles, or, speaking exactly, 51.9 miles, from its mouth at Saybrook, on Long Island Sound, to the city of Hartford. On this stretch of the river there has existed for many years a very considerable traffic. It amounted in the last year to 683,000 tons. The freight carried had a value of $23,000,000. There is a regular passenger line from Hartford to New York, and the route is utilized to a very considerable extent by barges for the carriage of freight from New York and other localities to points on the Connecticut River.

Above Hartford there are obstructions. The first 10½ miles could be improved with comparative ease. At that point there are rapids extending for 5½ miles, which under the existing state of improvement interpose an effective barrier to its practical navigation for commercial purposes, though a canal with a lock of small dimensions permits the passage of boats of small draft. The traffic, however, is negligible.

Beyond these rapids there is a stretch of 18 miles, extending 11 miles to the city of Springfield and the near-by city of Chicopee, and then 7 miles farther to Holyoke. So the section below Hartford is 52 miles in length, and that above Hartford is 34 miles in length, in the midst of which, however, these rapids are found.

It is a familiar fact to the Senate that the cities mentioned are busy industrial centers. It is probable that the traffic would be doubled if navigation could be extended from Hartford to Holyoke past Springfield and Chicopee.

There has been agitation on behalf of this improvement for many years. It assumed active form in the year 1898. Since then several surveys have been made by the engineers of the Government. The improvement has been found to be practicable, but the expense has seemed to be prohibitive, and whenever any one of these surveys has been presented Congress has refused to make the necessary appropriation. This bill seeks to accomplish, by the utilization of water power in coordination with navigation, that which the Government has declined to do as an independent proposition.

The original grant by the State of Connecticut to the Connecticut River Co. was made in the year 1824. I will read briefly from the charter, from which it will appear that the object was the promotion of navigation.

The charter of the Connecticut River Co., passed in May, 1824, provided:

Resolved by this assembly, That John T. Peters, David Porter, Charles Sigourney, with all such persons as are or may be associated with them for the purpose of improving the boat navigation of Connecticut River, and their successors, be, and they are hereby, incorporated and made a body politic, by the name of the Connecticut River Co.

That corporation is still in existence, and under this authority constructed the lock and dam to which I have referred. The present proportions of both lock and dam and canal are so small, however, as to be utterly inadequate to satisfy modern demands for traffic. The use of water power by this company was altogether incidental, and not until the year 1909 was any authority given to develop hydroelectric power in connection with their works, though prior to that time they had sold the use of surplus water.

I may further say that during the life of this present Congress bills were introduced in the Senate both for the Connecticut River Co. and for another corporation known as the Northern Connecticut Power Co., seeking to accomplish practically the same object as the bill under consideration. Those bills were referred to the Committee on Commerce, and by its chairman referred to a subcommittee. The subcommittee held numerous hearings, giving careful consideration to them, and concluded that so long as these two corporations were at odds it was useless to grant any franchise. They have now come to an agreement, which agreement, however, lasts only until March 4, 1913. That fact impresses upon us the desirability, and in fact the necessity, of early action on this bill.

I will now review briefly the pending bill. It is entitled:

A bill to authorize the Connecticut River Co. to relocate and construct a dam across the Connecticut River above the village of Windsor Locks, in the State of Connecticut.

I may state, before going into the bill in detail, that it follows, in its general provisions, the so-called dam act of 1906, as amended in 1910.

The first section grants to the licensee the right to construct, maintain, and operate a relocated dam of larger size than the present one. There are three provisions in the first section which are not contained in the general dam act.

In the first place, the time for completing the dam may be extended by the Secretary of War, for good cause shown, for two years beyond the time prescribed in the general act. This is thought proper in view of the magnitude of the work. The general dam act authorizes the licensee to enjoy the privilege

granted provided he shall begin work within one year and complete it within three years.

The second provision is found in lines 15 to 18 of page 2 of the bill, a provision that the rights and privileges granted—

May not be assigned except upon the written authorization of the Secretary of War, or in pursuance of the decree of a court of competent jurisdiction.

Mr. President and Senators, I maintain that a condition of that kind is absolutely necessary to prevent monopoly in this very valuable asset of the Nation. Already there has been a very considerable degree of consolidation. The head of the Bureau of Corporations made a report some time since, in which he showed this tendency to concentration in the hands of a limited number of corporations, and that under this tendency a very large share of the water power of the country was falling under the control of certain corporations which have been alert and active in seeking to gain for themselves this very valuable privilege.

The third clause in which there is matter not included in the general dam act is found in lines 13 to 25 of the second page of the bill, and in lines 1 to 8 of page 3.

Mr. THOMAS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Colorado?

Mr. BURTON. Certainly.

Mr. THOMAS. I should like to ask the Senator from Ohio whether the proviso just read by him would in any manner affect or prevent the assignment of the shares of stock of this company, or a majority of the shares of its stock, to some competing or other concern or individual?

Mr. BURTON. I presume not, Mr. President. As the Senator from Colorado will realize, we can adopt only regulations which will have a certain protective influence. Thus far in our legislation we have been content to place restrictions upon assignment to another organization. In time there may be a necessity, and, in fact, that necessity may exist now, to prevent common ownership. That was recommended in the report of the National Monetary Commission, in which there were very careful restrictions on common ownership of the stock of banks which should hold stock in the National Reserve Association.

The second portion of this bill, which is outside of the general dam act, reads as follows:

And provided further, That the Secretary of War, as a part of the conditions and stipulations referred to in said act, may, in his discretion, impose a reasonable annual charge or return, to be paid by the said corporation or its assigns to the United States, the proceeds thereof to be used for the development of navigation on the Connecticut River and the waters connected therewith. In fixing such charge, if any, the Secretary of War shall take into consideration the existing rights and property of said corporation and the amounts spent and required to be spent by it in improving the navigation of said river, and no charge shall be imposed which shall be such as to deprive the said corporation of a reasonable return on the fair value of such dam and appurtenant works and property, allowing for the cost of construction, maintenance, and renewal, and for depreciation charges.

Mr. CLARK of Wyoming. Mr. President——

The PRESIDENT pro tempore. Will the Senator from Ohio yield to the Senator from Wyoming?

Mr. BURTON. In just a moment.

It will be noted that this provision grants to the Secretary of War the right and the duty in certain cases to impose a charge to be deducted from the proceeds of the water power, the amount realized from that charge to be applied toward the improvement of the river and the waters connected therewith.

I now yield to the Senator from Wyoming.

Mr. CLARK of Wyoming. That is the exact point upon which I desired to interrogate the Senator. I understand from the public press that at least a tentative contract—an agreement upon which a contract shall be based—has been already entered into between the Secretary of War and this company. I will ask the Senator if he can furnish for the information of the Senate a copy of that contract which is proposed to be entered into under the terms of this section of the bill?

Mr. BURTON. Mr. President, I know of no such contract. I know of nothing outside the terms of this provision that is here before us. If it is in existence, I am entirely unaware of it.

Mr. BANKHEAD. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Alabama?

Mr. BURTON. Certainly.

Mr. BANKHEAD. If it does not disturb the Senator from Ohio, I think there is one very important question involved here which should be understood now before he proceeds further with his discussion, and that is whether the Connecticut River Co. owns the site where this dam is proposed to be built or whether it is the property of the Government of the United States.

Mr. BURTON. I will come to that fully in a moment.

Section 2 of the bill contains a provision pertaining to location and provides for navigation. It will be seen that all through this bill the paramount object to be obtained is navigation. For instance, the officials of the Government have the right to control the flow of water. This section contains a provision to the effect that a certain quantity must at all times be allowed to pass by the dam. There is a provision for the height of the dam under which interference with rights acquired above this locality is prevented.

In answer to the question of the Senator from Alabama I will now take up section 4. It provides:

SEC. 4. That compensation shall be made by the said Connecticut River Co. to all persons or corporations whose lands or other property may be taken, overflowed, or otherwise damaged by the construction, maintenance, and operation of the said dam, lock, and appurtenant and accessory works, in accordance with the laws of the State where such lands or other property may be situated; but the United States shall not be held to have incurred any liability for such damages by the passage of this act.

Thus it will be seen, in answer to the question of the Senator from Alabama, that a most comprehensive provision is made that all private rights shall be acquired by this company, and that it shall be done without the United States incurring any obligation. It should be stated further in this connection that the licensee or grantee under this bill already owns a considerable share of the land abutting on the river at this point, though more land would have to be acquired.

Mr. CUMMINS. Will the Senator yield for a question?

Mr. BURTON. Certainly.

Mr. CUMMINS. The Senator has touched a question that is very interesting to me and which is somewhat agitated in my own State now. I suppose the Senator would not insist that the Government of the United States could give to the Connecticut River Dam Co. or Bridge Co., whatever it may be, the right of eminent domain in the State of Connecticut?

Mr. BURTON. The Government of the United States, by statute of Congress, has done something quite similar to that. Congress has passed an act providing that where land must be utilized for a Government work or is needed by the Government in connection with that work the district attorney in that locality, at the direction of the Secretary of War, may proceed to condemn it on proper indemnity being given to the Government against loss.

Mr. CUMMINS. I simply wanted to know whether the Senator from Ohio was of the opinion that Congress would give to a private company engaged in building a dam, even though it improved navigation, the right to take property in one of the States without the assent of the State.

Mr. BURTON. Such right could be by Congress if the property is to be used for a Federal purpose. Laws have been enacted with this object in view. In the case referred to the action would probably have to be by the Government on the initiative of the private company.

Mr. BORAH. And that for a specific and limited purpose, not by the general right of eminent domain to condemn.

Mr. BURTON. For Federal purposes.

Mr. CUMMINS. I wanted to get it clear as the Senator went along. Assuming the primary purpose of the grant is to create power which is to be sold for private profit, can the Government give such a company the right to go into the State and condemn private property as for public use?

Mr. BURTON. As I have already stated, the principal object of this bill, if any action is taken under it, is for the development of navigation. The water power is incidental to that object.

Mr. CUMMINS. May I ask the Senator from Ohio whether, assuming that is true, assuming that the motive, if you please, on the part of Senators who would vote for this bill, is to improve navigation, but assuming also that it is a private company, the chief purpose of which, so far as the company is concerned, is to create power for sale, could Congress in any way give to that company the right to condemn land in the State of Connecticut?

Mr. BURTON. Not for the creation of water power pure and simple, but that is not the case which is presented here. It is an improvement of navigation. The company takes the place of the Government in the improvement of navigation. The company already has the right to develop navigation, and such water power as it develops is incidental to it.

Mr. CUMMINS. Of course, my whole question leads up to this inquiry. Will the assent of the State be required before the proposition can be put into practical operation?

Mr. BURTON. I should question whether it would, under the statute passed, I believe, in 1906, although I have not recently examined it. I do not think, however, that question would be of much practical importance in this particular case,

because the corporation already has its charter and has its right to proceed under it.

Mr. CUMMINS. I do not know that it will be important in this case, but it will be important in a great many cases. It is very important in my own State at the present moment, where a private company is endeavoring to condemn the land of a private owner for the purpose of building a dam or for the purpose of being permitted to overflow lowlands. As I understand it, that company has never asked for any such power from the State of Iowa; it has never asked the consent of that State to exercise the privileges of eminent domain; and I was very anxious to get the exact view of the Senator from Ohio, who has been a deep student of the subject, because I think it is going to be a very important inquiry before very long.

Mr. BURTON. I will state to the Senator from Iowa that a case is reported in the Federal Reporter, volume 32, page 9, Stockton, Attorney General of New Jersey, against The Baltimore & New York Railroad Co. and others, in which that question is, I think, discussed very fully, as well as a number of other questions, particularly the ownership of the land under water, the right of the State to compensation, and the right of the State to prohibit the construction of the bridge. All those questions are there discussed. I do not think it best to go apart from the discussion I am now pursuing to enter at this time upon that phase of a subject somewhat related, but which I do not think is immediately involved.

Mr. NEWLANDS. Mr. President——

The PRESIDENT pro tempore. Will the Senator from Ohio yield to the Senator from Nevada?

Mr. BURTON. Certainly.

Mr. NEWLANDS. I would suggest to the Senator from Iowa that inasmuch as the National Government has sovereign power over interstate commerce and over navigation as a part of that commerce, and has the power to construct a dam in a river for the purpose of promoting that commerce, it has also the sovereign power to condemn without the consent of a State the land that is necessary for that structure; and that, if as an aid of such an enterprise, water power is developed, the sale of which would probably come within the control of the State, that fact would not in any way affect the right of the Nation as a sovereign to condemn such property to public use.

Mr. BURTON. I shall go into that subject quite fully, Mr. President.

Mr. CUMMINS. I did not express an opinion; I am simply a listener in this debate, and I was very anxious to know the view of the Senator from Ohio. I am glad now to know the view of the Senator from Nevada upon the subject. Of course, I have an opinion, which I will express later.

Mr. THOMAS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Colorado?

Mr. BURTON. Certainly.

Mr. THOMAS. I understood the query of the Senator from Iowa to be whether this power could be transferred or delegated by the General Government to a private corporation having a contract to construct a public work, which is an entirely different proposition from that suggested by the Senator from Nevada.

Mr. CUMMINS. My inquiry was, When permission is granted to a private corporation that intended to build a dam, the chief purpose of which, so far as the corporation is concerned, was to furnish power to sell, whether the General Government could without the assent or action of the State give to such a corporation the right to enter the State and take lands under the principle of eminent domain?

Mr. THOMAS. That was my understanding of the Senator's question.

Mr. BURTON. Let me answer again in a word: The General Government can delegate to a private corporation the right to condemn land for the improvement of navigation, and neither Congress nor the courts would carefully scrutinize the dividing line between navigation and water power, though the fundamental reason must be the development of navigation.

Mr. BRANDEGEE. But is not the true reason because the Government constitutes the private corporation, its agent for that improvement, and it is not strictly a delegation of power?

Mr. BANKHEAD. I dislike very much to interrupt the Senator further, but there is one phase of this question to which I wish to call his attention, and I want him to elaborate it before he gets through. I should like to ask the Senator if he believes the Government of the United States can go into any State of the Union and condemn a site for any purpose except for navigation?

Mr. BURTON. That is a question which, if I were to answer yes or no, I would say no, in so far as the question relates to the development of navigable streams.

Mr. BANKHEAD. If they have no right to condemn it for any purpose except for navigation, then have they any right to dispose of an incident or a by-product that will result from that improvement?

Mr. BURTON. Most decidedly they have.

Mr. BANKHEAD. On that there is a difference of opinion. I think I will be able to show the Senate that they have not, according to all the decisions of all the courts which have passed upon that question.

Mr. BURTON. Indeed, I am rather surprised, Mr. President, that that question should be raised, for it is fundamental. I will come to it very soon.

Section 3 imposes the obligation on the company to—

> build coincidentally with the construction of the said dam and appurtenances, at a location to be provided by said corporation and approved by the Secretary of War, and in accordance with plans approved by the Secretary of War and the Chief of Engineers, a lock of such kind and size, and with such equipment and appurtenances as shall conveniently and safely accommodate the present and prospective commerce of the river, and when the said lock and appurtenances shall have been completed the said corporation shall convey the same to the United States, free of cost, together with title to such land as may be required for approaches to said lock and such land as may be necessary to the United States for the maintenance and operation thereof, and the United States shall maintain and operate the said lock and appurtenances for the benefit of navigation, and the said corporation shall furnish to the United States, free of charge, water power, or power generated from water power, for operating and lighting the said constructions; and no tolls or charges of any kind shall be imposed or collected for the passage of any boat through the said lock or through any of the locks or canal of said corporation.

Section 5 is also new. It provides that the franchise shall continue 50 years, and at the expiration of that time the Federal Government may either take over the property itself or authorize the transfer of the franchise and property to another than the original licensee. In this respect the bill differs materially from existing legislation on the subject. I think I can prove to the satisfaction of Senators that some clause providing for compensation at the end of 50 years is altogether necessary. Three or four forms of franchise have been suggested, one a perpetual franchise. That, of course, is what the licensee would prefer, but in view of the possible development of water power, such a franchise is out of the question. We should be failing in our duty if we granted anything of the kind.

Another form of franchise is the so-called indeterminate one, in which no period is fixed. That kind of a grant is sometimes expressed as one giving rights during good behavior. The corporations seem to prefer that form of grant rather than one fixing a specific period, but there is such a degree of uncertainty attaching to it that it does not seem to be desirable. There is one practical objection to that class of franchises which is particularly potent in our cities. It constantly keeps the holders of the franchise in politics. They are seeking to elect men to the city council and to public office who will be favorable to their corporation and the rights under it. On the other hand, an indeterminate franchise is not without substantial dangers to those who possess them. In some wave of feeling officials may be elected who will endeavor to confiscate the rights granted under it.

We now come to the question between the 50 years without any provision as to the disposition of the property at the end of the time and 50 years with a provision for compensation.

It is evident that if the right be given for but 50 years, at the end of that period the utmost right which the licensee would have would be for the removal of his structures, and even that right is very doubtful. In such a case as this those structures are essential for navigation; they form part of a general plan for the navigation of the river, and if they can be removed navigation must fail.

But from the standpoint of the public there is another and more vital objection to a franchise which expires in 50 years, with no provision for renewal. A very large expense must be incurred in the construction of the dam, the lock, and appurtenances. If at the end of 50 years the licensee has no right in the structures erected and maintained, he would be compelled to establish a sinking fund to pay off the cost of those structures. That expense is usually represented by bonds, and the cost of creating a sinking fund to pay off the principal and interest of such bonds during the life of the franchise will be imposed upon the consumers. No public service commission could deny that right in case it were required to fix the charges; it would not be just to ignore the situation, and a court in reviewing an order of the commission would take into account the necessity for providing such a fund in fixing the rates. On the other hand, if provision is made for compensation at the

end of 50 years, in a case of assignment of the franchise to another, or its assumption by the Government, the consumer is relieved from that very material expense.

It is also provided here that a bonus—I hardly like to call it a bonus—of 10 per cent may be paid. That will be within the authority of Congress. The language of the clause is:

Allowance being made for deterioration, if any, of the existing structures in estimating such efficiency, together with the fair value of other properties herein defined—

That is, the dam, the lock, the transmission lines, and the generating apparatus—

to which not more than 10 per cent may be added to compensate for the expenditure of initial cost and experimentation charges and other proper expenditures in the cost of the plant which may not be represented in the replacement valuation herein provided.

In the provision for compensation great care is taken so that the licensee may claim nothing for the franchise value. It is merely for the value of the property on the basis of what it would cost to reproduce it at the time. The licensee then could not claim that he had a right to bring forward a long list of expenditures for equipment that was obsolete. Oftentimes in a progressive establishment structures are built and machinery is installed which in a short time have to be thrown upon the scrap heap. No claim for any expenditures of that nature could be made under this provision; it must be for the cost of replacing structures and in accordance with their value at the end of the time.

Mr. President, I have now pointed out the differences between this bill and existing legislation. The following statement is made in the minority report, page 21 of the document which is before us:

A majority of the committee in their report say:
"It appears to be a settled question that the Federal Government may impose a charge for the use of the surplus water not needed for navigation."

Then the minority report says:

We, the minority, deny that this question has been settled, and we challenge the majority to point to a single law on the statute books, or to a report of a single committee in Congress, or to a single decision of the Supreme Court which tends to establish their contention.

Mr. President, it seems to me that that is rather an extraordinary statement. It is refuted by an exceptional array of reports of committees, acts of Congress, acts of various officials of the Government, and by decisions of the Supreme Court of the United States.

I wish, in the first place, to call attention to the so-called Nelson report, made from the Judiciary Committee of the Senate. It is found on page 96 of the very document that has been prepared in relation to this bill.

Mr. BRANDEGEE. Will the Senator kindly indicate the title of that document?

Mr. BURTON. That document is entitled "Federal Control of Water Power"; papers submitted to the Committee on Commerce of the United States Senate. It comes from the printer for the use of the Committee on Commerce. It comes with no number. On page 96 of this report the following statement is made:

If for the purpose of improving the navigability of a stream carrying interstate commerce the Federal Government constructs and maintains a dam, with locks and gates, the Government has the undoubted right to establish and maintain, in connection with such dam, an electric-power plant for the purpose of furnishing motive power to operate such locks and gates. And the Federal Government has the right to sell, lease, or rent, for compensation, any surplus power that may arise from and be an incident to such an improvement of navigation. (Kaukauna Water Power Co. v. Green Bay & Mississippi Canal Co., 142 U. S., 254.)

Mr. CLARK of Wyoming. Of course the Senator does not cite that as the report of a committee.

Mr. BURTON. I had understood that it was.

Mr. CLARK of Wyoming. No; the Judiciary Committee has never made a report on this question. On the contrary, this is the individual view of a single member of the subcommittee of the Committee on the Judiciary.

Mr. BURTON. I stand corrected in that particular, then; I had supposed that the Judiciary Committee having had it under consideration a very long time, and having been asked by Congress or by the Senate to report on the subject, the request of the Senate found its compliance in this very able report.

Mr. CLARK of Wyoming. Not at all. The Judiciary Committee was, in fact, engaged for a long while upon this question and never arrived at a committee determination.

Mr. BURTON. May I ask the Senator from Wyoming how long they were on that question?

Mr. CLARK of Wyoming. Oh, I can not say how long, but we consumed a good many meetings in the discussion of it in an endeavor to embrace the entire country, starting on the Atlantic coast and, I believe, getting as far as the Hudson River. This is the report or at least the individual view of a single member of the subcommittee, I think.

Mr. BRANDEGEE. Mr. President——

Mr. NELSON. I will state that this is the report——

The PRESIDING OFFICER (Mr. KENYON in the chair). Does the Senator from Ohio yield, and to whom?

Mr. BURTON. I yield to the Senator from Minnesota.

Mr. NELSON. I will state it is the report of the subcommittee, consisting of the Senator from New York [Mr. ROOT], the Senator from West Virginia [Mr. CHILTON], and myself, to the full committee.

Mr. BURTON. I can only say in deference to those gentlemen that while it may not be the report of the committee, it certainly will carry very great weight from three very eminent men.

Mr. CLARK of Wyoming. It would be a very valuable legal opinion.

Mr. BRANDEGEE. Mr. President——

Mr. BURTON. I yield to the Senator from Connecticut.

Mr. BRANDEGEE. I was about to observe that it appears on page 85 of the document to which the Senator has just referred, and that it purports to be the "Views of Senator NELSON on Senate resolution 44, Sixty-second Congress, second session." That was the resolution introduced by the senior Senator from Washington [Mr. JONES], requesting the views of the Judiciary Committee on these questions.

Mr. BANKHEAD. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Alabama?

Mr. BURTON. Certainly.

Mr. BANKHEAD. I want to remind the Senator from Ohio that the case he cited here is not parallel to this one at all. The question of the Senator from Minnesota was as to where the Government itself was the riparian owner, where it owned the site itself, built the dam, and expended all of its own money in constructing the dam and preparation for navigation.

Mr. BURTON. While the Senator from Alabama is on his feet, I will read another quotation, two pages later, from that report.

Mr. BANKHEAD. I want the Senator to answer my present inquiry before he reads the extract.

Mr. BURTON. I will read; and it is an answer to your interrogatory.

Mr. BANKHEAD. Very well.

Mr. BURTON. It reads:

Responding to the second interrogatory, we are of the opinion, divorcing the question from riparian rights, that the Federal Government, in authorizing the construction and maintenance of a dam on a navigable stream by States, municipalities, or private parties, for the chief and primary purpose of improving the navigation of the stream, has the same right to prescribe the terms and compensation for the use of the surplus power, created as an incident to the main improvement, as the Government would have in case it had itself built the dam or made the improvement, and that the Government, having delegated the power of building such dam to private parties, might well confer upon them as compensation for the work thus undertaken the right to do what the Government itself could do in case it had itself constructed the work.

Mr. BANKHEAD. I ask the Senator from Ohio from what he reads?

Mr. BURTON. This is the same report, and I read from page 98.

Mr. BANKHEAD. I know it is the same report, but from whom does the Senator quote?

Mr. BURTON. From Senator NELSON's views.

Mr. BANKHEAD. I thought the Senator was quoting from the Secretary of War.

Mr. BURTON. Oh, no.

Mr. NELSON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Minnesota?

Mr. BURTON. I yield to the Senator from Minnesota.

Mr. NELSON. Mr. President, the Senator from Ohio is not able to draw the proper conclusion from those two statements. In the one case, where the Government for the purpose of improving navigation constructs a dam and water power, that being the main purpose, though incidentally there is power created in connection with it, the Government, according to my opinion, has the right to charge compensation; but where the Government says to a private corporation, "We will give you permission"—and the permission only amounts to this, that we will consider the structure is not an impediment to navigation—where the Government says, "We will give you permission; we will put you in our place; you may build a dam with your own money if you will build it as prescribed by the Board of Engineers," in that case compensation for the use of the power belongs to the company that has put its money into the work, whereas in the other case it belongs to the Federal

Government, which has invested its money. It is exactly the same principle; the Government or the company that invests the money and makes the structure is entitled to the compensation.

Of course, when you come to compensation that a private company may exact, you are confronted by the question as to the rights of the State in the premises and the rights of the other riparian owners, which is a question divorced from this general proposition.

Mr. BURTON. Mr. President, let us see the position that the Senator from Minnesota takes. He says that the Government can authorize a private corporation to build a dam, and that dam shall be the property of the Government, the lock in connection with it shall be the property of the Government.

Mr. NELSON. Oh, no; I did not say that. I did not say that either the dam or the lock should be the property of the Government.

Mr. BURTON. It does not make any difference whether the Government has the ownership or merely the use for navigation. The Senator from Minnesota and every Senator who signed the minority report here agreed to the provisions in this bill—provisions that have been carried on the general dam act for years and included in a number of bills which Congress has passed. What are those conditions? That the Government——

Mr. JONES. Mr. President——

Mr. BURTON. I would like to proceed with my answer on this proposition. The minority concede that the Government may insist that the private corporation build the dam; it may insist that the private corporation build a lock, which has nothing whatever to do with the development of power, but is only for navigation; it may insist that it shall equip that lock and dam for navigation; it may insist that for all time power shall be furnished for the operation of that lock so that boats shall go through—all these are compensations for the right. But when it is asked that the company shall also pay a compensation, the minority say that can not be done. After having compelled the expenditure of some millions for the dam, half a million for the lock, after imposing on them the obligation for the maintenance of power, after having swallowed a camel, in fact three or four camels, you then strain at a gnat, and say you can not impose upon them the obligation to pay anything by way of rental when they have already agreed to expend millions for the privilege. As regards the few dollars that the company must pay from proceeds when the works are finished you come in here and say, "There you have got to jump off; you can not go any farther."

Mr. NELSON and Mr. BRANDEGEE addressed the Chair.

The PRESIDING OFFICER. To whom does the Senator from Ohio yield?

Mr. BURTON. I yield, first, to the Senator from Minnesota.

Mr. NELSON. There is no compulsion on the parties who desire to construct a dam and create a water power on a reach of a river that is not navigable. They could go to work under State law and construct that dam. In the olden times, when we had merely the country sawmill and the ordinary flour mill, hundreds of dams were constructed throughout the country in connection with them, and the Federal Government never thought of interfering.

Mr. BURTON. Yes; and in this particular instance——

Mr. NELSON. In these later days, when the construction of dams leads to the development of electrical power, it involves the employment of large capital. Bonds have to be issued to obtain money to build dams on a vast scale, and the men who furnish the capital say, "We want you to go to the Federal Government to get a license."

What is it the Federal Government grants in this case? It says to these owners, "If you construct this dam as we require, with locks and gates, and operate it for the ends of navigation, we will not consider it as an obstruction to commerce and navigation." That is all that license amounts to. The Federal Government does not create any other power, and the Federal Government does not compel these parties to build the dam. They come here and get that license, a license which, in effect, is that if they do so and so, if they build the dam in this manner, we will not consider it an impediment to navigation.

Mr. BURTON. It seems to me the Senator from Minnesota goes far astray from the nature of the transaction. The parties choose to come to the Federal Government for the permission. It is useless to say that they could go to the State of Connecticut and get this permission. This act, while the locus is in Connecticut, is of far more importance to Massachusetts than it is to Connecticut. What is it that is imposed upon the company? Certain conditions under which they enjoy that privilege. What is the theory of it? That the Government, as a requisite for the right to locate there at all, imposes certain obligations upon them—charge for the use of the water. If we tell them, "Instead of paying us the money for it you can build a dam if you will, and you may build the locks," those are all of them conditions under which they go in there and take possession. In principle there is no difference whatever between an annual license and the expenditure of a vastly larger amount of money, which is necessary for placing those structures there and making the stream navigable.

Mr. BRANDEGEE. Will the Senator from Ohio yield to me?

Mr. THOMAS. Mr. President——

Mr. BURTON. One at a time. I will first yield to the Senator from Connecticut.

Mr. BRANDEGEE. I wanted to emphasize, if I might, the point which I think the Senator from Ohio alluded to, that in this particular bill the payment by the company of money is simply in effect a payment to the Government as trustee, and must be used for the improvement of navigation in that very river, hence it is just as properly a part of the condition under which the license is granted as the construction of the lock itself.

Mr. BURTON. Certainly. I am coming to that later, to show the difference.

Mr. THOMAS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Sentor from Colorado?

Mr. BURTON. I yield to the Senator from Colorado.

Mr. THOMAS. Suppose that instead of providing that this fund to be raised was to be used for the improvement of the Connecticut River the proviso was that it should be used for the improvement of the Hudson River, would that be an exercise of a power that belongs to the Federal Government?

Mr. BRANDEGEE. Is the Senator from Colorado asking me that question?

Mr. THOMAS. Yes. If the purpose of this bill is within that power, why, then, can not the fund be also diverted to the Hudson River or to some other river in some other State?

Mr. BRANDEGEE. It could not, certainly, under the terms of this bill.

Mr. THOMAS. I am not speaking about that, but about the extent of the power if we admit it for any purpose.

Mr. BRANDEGEE. I understand the Senator's question; and I will say I do not believe anybody can certainly answer the question. It has occurred to me that it might be constitutional for the Government, in the issuing of these permits, to provide, for instance, for a national fund, into which these payments should go, to be used in the interest of navigation. If we have jurisdiction of navigation under the commerce clause of the Constitution, what the Supreme Court would say about the legality of such a law, such a policy, I am not prepared to state, but I think clearly in this case, where it is confined to a particular river and made a condition of a particular improvement, it would be valid.

Mr. THOMAS. Mr. President, my purpose in rising was to inquire of the Senator from Ohio whether the right which he claims the Government has in a matter of this kind and whether the report made by the Senator from Minnesota, from which he read an extract, does not necessarily involve as a condition of its existence the ownership by the Government either of the waters of the stream or of the force which is created by gravity in the improvement of the water?

Mr. BURTON. Not at all. I shall dwell on that subject somewhat later in the course of my argument.

Mr. THOMAS. I should like to hear the Senator discuss that question.

Mr. JONES. Mr. President, the Senator may have gotten away from the point to which I desired to call attention——

Mr. BURTON. If I have, we will try to get back to it.

Mr. JONES. The Senator read an extract from the views of the Senator from Minnesota to sustain his proposition that the Government would have the right to make a charge for the surplus water power when the dam was constructed by private parties. If he had read just a few sentences further, he would have seen the views of the Senator from Minnesota with reference to what that charge should be and for what it should be made. I desire to read that.

Mr. ROOT. What page?

Mr. JONES. Page 98.

Mr. BURTON. Before the Senator from Washington reads that, I want to call his attention to the fact that he is likely to fall into error there.

Mr. JONES. I want this in the RECORD in connection with what the Senator read from the report of the Senator from Minnesota, because I am afraid that his hearers may be led into an error from what he read——

Mr. BURTON. Not at all.

Mr. JONES. If they do not hear what he failed to read. Now I will read it:

And in such case the Government would be authorized to charge a nominal license fee for inspecting and passing upon the plans and for watching over the work to see that it conforms to the plans and is properly maintained; but the regulative power of the Government would not extend to the use of the water for other purposes than navigation and interstate commerce. In such a case it seems to us that the Federal Government has no water power to sell or charge compensation for, for it is only authorized by the Constitution to regulate interstate and foreign commerce, which in this case means navigation.

Mr. BURTON. The Senator from Washington left out a part of that paragraph that would change the sense as much as leaving out the word "not" in one of the Ten Commandments. He has left out this—the first portion of it pertains to navigable streams—then he goes on to say—and I will read what the Senator from Washington has omitted——

Mr. JONES. Well, Mr. President, I suggest to the Senator that he connect it with what he previously read.

Mr. BURTON. I will begin just where I left off.

Mr. NEWLANDS. On what page?

Mr. BURTON. Page 98. I have already read in the hearing of the Senate the portion which pertains to the improvement of navigable streams for the purpose of navigation with water power incidentally created.

Mr. JONES. Does the Senator contend that what I read does not relate to navigable streams?

Mr. BURTON. I will read it. That is the best way to answer that question.

Mr. JONES. Very well.

Mr. BURTON. It is as follows:

In this connection, and as a further response to the interrogatory, it must be noted that the mere grant by the Federal Government of authority to construct a dam in a navigable river, not for purposes of navigation, but really for the creation of a water power, is merely a license or permit, the effect of which is that if the dam is constructed and operated conformable to plans approved by the Government, it will not be deemed an obstruction or impediment to navigation.

I want to say to the Senator from Washington it is perfectly plain that the first portion of the paragraph pertains to an improvement for the purpose of navigation where water power is incidental, and the latter portion, in the distinctest language—and that is the sentence the Senator from Washington omitted—says:

Authority to construct a dam in a navigable river, not for purposes of navigation, but really for the creation of water power—

And so forth.

Mr. JONES. Well, Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield further to the Senator from Washington?

Mr. BURTON. Yes.

Mr. JONES. Of course I can see where there may be a difference of opinion with reference to the purposes of this bill, but the main purpose of this bill is not to aid navigation. The primary purpose is to develop water power. The grantee in this case is not getting this grant for the purpose of aiding navigation but is getting it for the purpose of building and constructing water power for private purposes. It has to get permission of the Government to operate in a navigable stream, and so it is proper that the Government should put in this bill the necessary restrictions and provisions for the protection of navigation. The purpose, however, of this company is not to promote navigation but to develop water power.

Mr. ROOT. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from New York?

Mr. BURTON. Certainly.

Mr. ROOT. I want to suggest to the Senator from Washington that there may be two purposes in this bill.

Mr. JONES. Oh, there are more than two.

Mr. ROOT. There may be a purpose of the company and there may be a purpose of the Government of the United States. The purpose of the Government of the United States may be to utilize the willingness of this company to construct this dam in order that the navigation of the Connecticut River may be improved.

Mr. JONES. Certainly.

Mr. ROOT. And the provisions upon which the contest as to the propriety and validity of this measure depend are provisions which relate to carrying out the purposes of the Government in respect of navigation.

Mr. JONES. There is not any doubt in my mind that the language used by the Senator from Minnesota in the report just quoted applies to the case that we have before the Senate now. I do not think there is any question about that at all.

Mr. BURTON. I must most materially differ with the Senator from Washington in regard to that. The reading of the whole paragraph will not enable anyone to come to that conclusion.

Mr. JONES. I am satisfied that the Senator from Minnesota would claim that that was the thought he had in mind when he used that language; and the case was exactly on all fours with the one we have before the Senate now.

Mr. WORKS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from California?

Mr. BURTON. Certainly.

Mr. WORKS. I should like to ask the Senator from Ohio whether he understands that the power that is to be developed by the construction of this dam is for private use or whether it will become a public use?

Mr. BURTON. Well, there is no specification in regard to that.

Mr. WORKS. That is a very important matter to be considered.

Mr. BURTON. Does the Senator from California mean whether it is to be used for lighting or some public utility in some of the cities around or whether it is for power used for factories?

Mr. WORKS. I mean whether it is developed for the purpose of sale to others.

Mr. BURTON. It is so developed.

Mr. WORKS. If that be so, Mr. President, every additional burden that is placed upon the development of the water power must be paid ultimately by the consumer. In determining what rate shall be paid—and those rates certainly must be fixed by the State, and not by the National Government—the amount necessarily paid out by the corporation must be taken into account in determining the rate to be paid. In other words, if $100,000 is exacted by the Government for the use of this privilege, that is a part of the amount necessarily invested by the corporation, and the consumers must pay, in the first instance, interest upon that charge. That is a direct interference with the right of the State to control the water rights, and that is just what the people out in the West desire to avoid. I do not know how it may be in other States; water may be cheaper elsewhere than it is in California; but in southern California the item of cost of water for irrigation is a very important one, and we are not willing to see a policy established that will compel our people to pay an additional amount for the use of the water.

Mr. BURTON. Mr. President, we can not afford to blind our eyes to the fact that there are two interests represented here. One is the Federal Government, which must at great cost improve, and has at great cost improved, this river. It must incur expense in the future. The consumer also has his rights; but those rights are subject to the paramount authority of the Federal Government to maintain navigation in that river. The Senator from California virtually says if there is a facility or natural resource to be utilized anywhere, the consumers or the persons in the locality must have the full benefit of it. I want to answer that a little further on. But is it true that this proposed charge falls on the consumer? Theoretically that may be so; but the charge would not materialize until the consumer had had every opportunity to secure his rights. Under what circumstances would this charge be made? This company would erect its works—its generating apparatus, its transmission lines, and so forth—and then would come the State of Connecticut and fix the price that the company shall charge to the consumers. After that is done and the plant is in operation, it would be the right of the Government to impose or not impose a charge, as conditions might warrant. In this connection the bill provides:

In fixing such charge, if any, the Secretary of War shall take into consideration the existing rights and property of said corporation and the amounts spent and required to be spent by it in improving the navigation of said river, and no charge shall be imposed which shall be such as to deprive the said corporation of a reasonable return on the fair value of such dam and appurtenant works and property, allowing for the cost of construction, maintenance and renewal, and for depreciation charges.

It would come into operation as a check on exorbitant profits, not to be imposed until the rights of the consumer, the rights of the company, and the rights of the general public are fully protected.

Mr. WORKS. Mr. President, I think the Senator from Ohio is confusing the matter of the protection of navigation with the right to the use of the water itself, and the right on the part of the State to control that use. It may be——

Mr. BURTON. In due time I will come to that. Let me ask the Senator from California what rights do the States have? What right has the State of Connecticut in this case?

Mr. WORKS. I do not know anything about what the law may be in the State of Connecticut; I am not dealing with Connecticut, but with the State of California.

Mr. BURTON. In the State of the Senator from California water belongs to the State in a very different sense from what it does here.

Mr. WORKS. I do not know why it should be in any different sense.

Mr. BURTON. You do not have the same in regard to water in California, do you?

Mr. ROOT. You have a different system of laws there.

Mr. WORKS. Certainly; the system of laws is different, but the principle is precisely the same. The right to use the water belongs to the State in the first instance. Of course the old doctrine of riparian rights may exist, and probably does exist, in Connecticut. The riparian right exists in California, but, Mr. President, it is subject to the right of the State to fix the rates and control the amount of water that shall be taken out of the river. The objectionable feature of this measure is that the Government is interfering in such a way as to increase the amount necessary to be paid for the water. There is no escaping that fact. The Senator from Ohio may regard it as a merely nominal additional rate to be paid, but the exactions may be such as to increase the rate materially. Whether it does or not, however, the principle is precisely the same. The National Government is interfering with the right of the State to fix the rate and the right of the consumer to have the water at a reasonable rate, to be fixed in that way; and there is no escaping from it.

Mr. BURTON. But, Mr. President, the Federal Government is not interfering with the right of the State to fix the rate. Personally I think the time will come when there will have to be national supervision over these charges, similar to that exercised over railroads through the Interstate Commerce Commission; but I can not accept the idea that the different States are the pampered children of an indulgent parent and that in the case of a very valuable asset, such as this, States may appropriate it all for themselves, and that the Government must overcome the rapids, build locks and dams at enormous expense, and improve the navigation of a river when that improvement inures to the benefit of a particular locality and is demanded by that locality, and that such expenditure shall be without countervailing obligations on the other side.

Now, Mr. President, to resume my argument in regard to the reports of committees on this subject, I want to call the attention of the Senate to Senate bill 943 as reported with an amendment from the Committee on Commerce. It is an act to improve navigation on the Black Warrior River, in the State of Alabama. I read again the statement in the views of the minority on the pending bill. In answer to the statement in the majority report that—

> It appears to be a settled question that the Federal Government may impose a charge for the use of the surplus water not needed for navigation.

The minority report says:

> We, the minority, deny that this question has been settled, and we challenge the majority to point to a single law on the statute books, or to a report of a single committee in Congress, or to a single decision of the Supreme Court which tends to establish their contention.

The Black Warrior River is in the State of Alabama. The bill was reported by the Committee on Commerce. Let us see what the provisions of this bill are with reference to imposing a charge:

> SEC. 4. That the Secretary of War is authorized and empowered to enter into a contract with the Birmingham Water, Light & Power Co., a corporation organized under the laws of the State of Alabama, its successors and assigns, for the purpose of carrying out the stipulations and performance herein mentioned. It shall be provided in said contract that the company, its successors and assigns, shall have the right to construct, maintain, own, and operate, at its own cost, in connection with Dams and Locks 16 and 17, for a period of 50 years from the time fixed in this act for completion of the works herein authorized, electrical power stations—

And so forth. It is not necessary to read all of the act.

Mr. BANKHEAD. Mr. President, if the Senator will permit me——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Alabama?

Mr. BURTON. Certainly.

Mr. BANKHEAD. The Senator can not fail to remember that when that bill went to conference it was distinctly stated on the floor of the Senate that, if the Senate would permit a report to be made, everything in the bill pertaining to power would be stricken out, and that the bill would come back to the Senate simply as a navigation proposition, and that that was done.

Mr. BURTON. It is a very singular thing for a committee of the Senate to go through the farce of bringing in a bill here with elaborate provisions, and approve it, with the idea that it is going to be meaningless and all stricken out. This is the form in which it was not only introduced in the Senate, but passed in the Senate, as I recall. Certainly it is a report of the Committee on Commerce.

Mr. BANKHEAD. I think if the Senator will examine the bill he will find those are House amendments. The RECORD so shows.

Mr. BURTON. Then it is a report of the Committee on Rivers and Harbors. It is possible I am in error in that regard, but I think not.

Mr. BANKHEAD. Yes; the Senator is in error.

Mr. BURTON. It is a report of the Committee on Rivers and Harbors?

Mr. BANKHEAD. One more moment, and then I will not interrupt the Senator any further, as the time will come, perhaps, when some of the rest of us will have an opportunity to discuss this question.

Mr. BURTON. I think some of you are discussing it now.

Mr. BANKHEAD. I do not want the Senate to be misled, because the Senate will remember, and the records will show, that every provision referred to by the Senator from Ohio was stricken out in conference.

Mr. BURTON. This bill passed, did it?

Mr. BANKHEAD. Yes, it passed, and it is in operation now simply as a navigation proposition, and the locks are almost complete.

Mr. BURTON. But this provision in regard to the leasing of power was not accepted.

Mr. BANKHEAD. That is not in the bill. We struck it out.

Mr. BURTON. Here is the report from the Committee on Rivers and Harbors of the House, or from the Committee on Commerce of the Senate:

> The said contract shall further provide for the payment by the company to the Government of an annual rental for its use of the water power developed at Dams 16 and 17. For a period of 20 years the rental shall be at the rate of $1 per annum per horsepower developed, which rate shall be subject to readjustment by the Secretary of War at the end of that period and thereafter at the end of every 10-year period.

Mr. BANKHEAD. That was all stricken out of the bill. There is nothing of that sort in it.

Mr. BURTON. However, it is at least an absolute contradiction of the statement in the minority report that no committee of Congress has recommended anything of this kind. I am coming to some cases that are altogether stronger than these, but I give these merely with reference to the reports of committees.

I want to call attention next to a number of statutes——

Mr. BANKHEAD. Wait a moment; I want to get the Senator right. That is not the report of a committee of the House. That amendment was offered on the floor of the House by Mr. HUMPHREYS of Mississippi, and after two or three days the bill passed and came over here with that provision in it, and it was stricken out.

Mr. BURTON. It does not look that way in the copy I have here.

Mr. BANKHEAD. I do not know how it looks; but if the Senator will take the RECORD he will find it.

Mr. BURTON. The whole bill was passed by the Senate in that form. The Senator is in error in regard to that.

Mr. BANKHEAD. No; I am not.

Mr. BURTON. It is marked here: "Passed the Senate July 24, 1911."

Mr. JONES. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Washington?

Mr. BURTON. Certainly.

Mr. JONES. I will ask the Senator to read from the report of the committee his views with reference to the matter, because the fact that the bill passed the House would not indicate whether any part of it was put on upon the floor of the House, or put on in committee and reported by the committee. The report of the committee of the Senate will show what the views of the committee were.

Mr. BURTON. I have somewhere a copy of that report. It is possible that I can turn to it before I am through with my remarks.

I want to call attention next to a great variety of statutes on the subject. They are of three classes. The first class comprises dams constructed by acts of Congress where surplus water, not needed for navigation, has been leased for water-power purposes. In a report of the Sixty-second Congress, first session, Document No. 57, there are a number of these. I wish to invite attention to the first class.

The earliest act, perhaps, was in the year 1888, which allowed power in the Muskingum River to be used for private purposes. By that act the Secretary of War is authorized and empowered

to grant leases or licenses for the use of the water powers at such rate and on such conditions and for such periods of time as may seem to him just, equitable, and expedient. Under that statute, passed now nearly 25 years ago, the authority to make charges for surplus water power has ever since been exercised. An advertisement was made just a few days ago for a lease of the power in connection with one of the dams for a period of 22 years.

The second instance is that of the Green and Barren Rivers of Kentucky. That act was passed September 19, 1890. Under it the Secretary of War is authorized and empowered to grant leases or licenses for the use of the water powers, at such rate and on such conditions and for such periods of time as may seem to him just, equitable, and expedient, with an added condition that the leases are not to extend beyond the period of 20 years.

Mr. President, I desire to have this document printed with my remarks, because it sets forth a large number of these instances.

The PRESIDING OFFICER. Without objection, it is so ordered.

The document referred to is as follows:

[Senate Document No. 57, Sixty-second Congress, first session.]

WATER-POWER PRIVILEGES.

Mr. BURTON presented the following memorandum from the Acting Chief of Engineers of the War Department relative to acts of Congress concerning power privileges at Government dams. June 29, 1911. Ordered to be printed.

Memorandum of acts of Congress concerning power privileges at Government dams.

Names of rivers.	Grantee.	Date of act.	Provisions of act.	By whom improvement made.
Muskingum, Ohio	General authorization	Aug. 11, 1888 (25 Stat., 417)	The Secretary of War authorized and empowered to grant leases or licenses for the use of the water powers, at such rate and on such conditions and for such periods of time as may seem to him just, equitable, and expedient.	United States.
Green and Barren, Ky	do	Sept. 19, 1890 (26 Stat., 447)	The Secretary of War authorized and empowered to grant leases or licenses for the use of the water powers, at such rate and on such conditions and for such periods of time as may seem to him just, equitable, and expedient, with added condition that leases are not to extend beyond the period of 20 years.	Do.
Cumberland, Tenn., at Lock No. 1.	do	June 13, 1902 (32 Stat., 408)	The Secretary of War authorized to grant leases or licenses for the use of the water power at such rate and on such conditions and for such periods of time as may seem to him expedient. (See also act of June 28, 1902.)	Do.
Tennessee River at Hales Bar.	City of Chattanooga or other private corporations.	Apr. 26, 1904 (33 Stat., 309)	Grantee to purchase necessary lands and deed same to United States, to construct lock and dam and give them to United States completed, free of all cost except expenses connected with preparation of plans, superintendence, cost of lock gates, etc., and to furnish United States free electric current for operating locks and for lighting. Grantee to have use of water power for 99 years.	Private.
Mississippi at Des Moines Rapids.	Keokuk & Hamilton Water Power Co.	Feb. 9, 1905 (33 Stat., 712)	Grantee to build a lock and dry dock and appurtenant works, and United States to have ownership of them. Grantee to provide suitable power plant for lighting and operating the lock, dry dock, and appurtenances, and to provide fishways.	Do.
Cumberland and tributaries.	Cumberland River Improvement Co.	Mar. 3, 1905 (33 Stat., 1132)	Right to collect tolls to cease at expiration of 40 years from date of completion of Lock and Dam No. 21, Cumberland River, and United States may then assume the possession, care, operation, maintenance, and management of the lock or locks constructed by the corporation but without in any way impairing the right or ownership of the water power and dams created by the corporation.	Do.
Coosa, Ala., at Lock No. 2	General authorization	May 9, 1906 (34 Stat., 183)	United States reserves right to control dams and pool level and to construct locks. Land for lock and approaches to be conveyed to United States free of charge, and United States to have free water power for building and operating locks. Fishways to be constructed.	Do.
White, Ark., at Lock No. 1	Batesville Power Co	June 28, 1906 (34 Stat., 536)	The Secretary of War authorized and directed to fix from time to time reasonable charges to be paid for use of power.	Do.
Coosa, Ala., at Lock No. 12	Alabama Power Co	Mar. 4, 1907 (34 Stat., 1288)	Dam to be built so that the United States may construct a lock in connection therewith. The grantee to have the right to use Government land necessary for the construction and maintenance of the dam and appurtenant works, to convey to the United States free of cost such suitable tract or tracts as may be selected by the Chief of Engineers and the Secretary of War for establishment of locks and approaches, and to furnish the necessary electric current to operate locks and for lighting grounds.	Do.
St. Marys, Mich	General authorization	Mar. 3, 1909 (35 Stat., 821)	Water power to be leased by the Secretary of War upon such terms and conditions as shall be best calculated, in his judgment, to insure the development thereof. A just and reasonable compensation to be paid for use.	United States.
Wabash, Ind., at Mount Carmel.	General authorization	Mar. 3, 1909 (35 Stat., 819)	Secretary of War authorized to grant leases or licenses for periods not exceeding 20 years at such rate and on such conditions as may seem to him just, equitable, and expedient.	Do.
Mississippi, from St. Paul to Minneapolis.	do	June 25, 1910 (36 Stat., 659)	A reasonable compensation for leases of water power shall be secured to the United States.	Do.
Coosa, Ala., at Lock No. 4	Ragland Water Power Co	Feb. 27, 1911 (36 Stat., 939)	The dam to be property of the United States free of charge. Grantee to have water-power rights for 50 years. United States to have right to construct a lock and to have free electric current for operating and lighting. Grantee to raise height of dam at Lock No. 4 and to stop leaks. Beginning in 1925, grantee shall pay to United States $1 per 10-hour horsepower, with an increase if natural flowage is increased by storage reservoirs.	Private.
Wabash, at Mount Carmel, Ill.	Mount Carmel Development Co.	Feb. 14, 1889 (25 Stat., 670) Feb. 12, 1901 (31 Stat., 785)	Withdrawal of water shall be under the direction and control of the Secretary of War.	United States.
Rock River near Sterling	Sterling Hydraulic Co.	Mar. 2, 1907 (34 Stat., 1103)	Secretary of War authorized to permit erection of a power station in connection with United States dam. Grantee to waive certain claims against United States.	Do.
White, Ark., above Lock No. 3.	J. A. Omberg, jr	June 29, 1906 (34 Stat., 628)	Grantee to purchase lands, construct lock and dam, and give them to the United States free of charge and furnish United States electric current to operate locks, light grounds, etc. Grantee to have use of water power for 99 years.	Private.

Mr. BURTON. Further on in this class are some very recent ones. The act of June 28, 1906, is one, in which a grant was made to the Batesville Power Co., at Lock No. 1, White River, Ark. In that act the Secretary of War is authorized and directed to fix from time to time reasonable charges to be paid for the use of power. Another is at Wabash, Ind., at Mount Carmel. That is a very old improvement. The first act in relation to that improvement was passed in 1889; another act was passed in 1901, and another in 1909. Under the last act the Secretary of War is authorized to grant leases or licenses for periods not exceeding 20 years, at such rate and on such conditions as may seem to him just, equitable, and expedient. So not only has this power been exercised in numerous cases, but the discretion to fix the charges has been left to the Secretary

of War. Still another case is that of the Rock River, near Sterling; also the White River, Ark., above Lock No. 3.

There is a second class in which it has been provided that where dams, or dams and locks, are to be constructed in the future by the Government, the water power created incidentally thereto shall be leased under the direction of the Secretary of War. There is a very considerable number of these cases. I call attention to the provision in the river and harbor act of 1909, providing for the improvement of the St. Marys River. I call attention also to a provision in the act of 1907, in regard to a survey of a 14-foot waterway by way of Chicago to the Mississippi River:

The Secretary of War may appoint a board of five members, to be composed of three members of the Mississippi River Commission.

It goes on to say what that board shall report upon:

First. What depth of channel is it practicable to produce between St. Louis and Cairo at low water by means of regulation works?
Second. What depth will obtain in such regulated channel at the average stage of water for the year?
Third. For what average number of days annually will 14 feet of water obtain in such regulated channel?

The fourth and fifth provisions are immaterial.

Sixth. And the said board shall also report upon any water power which may be created in the portion herein directed to be surveyed, as well as in the proposed waterway from St. Louis to Chicago heretofore surveyed, and the value thereof, and what means should be taken in order that the Government of the United States may conserve the same or receive adequate compensation therefor.

Here, in this survey of a proposed 14-foot waterway, one of the vital points upon which the board was to report was what means should be taken to conserve the water power and to secure adequate compensation therefor.

I wish to call attention to another provision of law under which this very project in the Connecticut River was surveyed. It is a general provision in the river and harbor act of 1909. It is found on page 9 of that act. I wish Senators to give especial attention to this provision, to show how useless it is to deny that this has been a substantial feature in the policy of the Federal Government.

In the portion relating to the general rule in regard to surveys, that act says:

Provided, That every report submitted to Congress in pursuance of this section, in addition to full information regarding the present and prospective commercial importance of the project covered by the report and the benefit to commerce likely to result from any proposed plan of improvement, shall contain also such data as it may be practicable to secure regarding (first) the establishment of terminal and transfer facilities—

That provision does not apply in this case, but I read it so as to give the whole paragraph—

(second) the development and utilization of water power for industrial and commercial purposes, and (third) such other subjects as may be properly connected with such project: *Provided further*, That in the investigation and study of these questions consideration shall be given only to their bearing upon the improvement of navigation and to the possibility and desirability of their being coordinated in a logical and proper manner with improvements for navigation to lessen the cost of such improvements and to compensate the Government for expenditures made in the interest of navigation.

Thus, Mr. President, the very survey under which this project was reported was authorized in a bill that demanded of the engineers that they should report upon possible compensation to the Government for its expenditure in the interest of navigation; and the engineers reported, stating that there should be compensation in this instance. They made that recommendation in view of the fact that for years this project had been pending, and it had not been thought best to expend the money unless the water power could be utilized and the compensation applied on the cost of the improvement. When at last the time came that the water power could be developed coordinately and contemporaneously with the improvement of navigation, then, and not until then, did the Government approve this proposed improvement.

A third class comprises acts of Congress granting permission to lessees to construct dams in navigable streams subject to various conditions. These conditions vary all the way from a requirement that the lessee shall build the dam at its own expense, but allow the Government at its expense to construct in connection therewith locks and other works in the interest of navigation—that is one extreme—to conditions requiring the lessee at its own expense to build the dam and all works necessary for the protection and promotion of navigation, and convey to the Federal Government all such works as may be necessary free of cost, together with a stipulation that power shall be furnished to the Federal Government for operating and lighting such works. In some of these grants the Federal Government has imposed an additional charge either stipulated in the act or to be imposed in the discretion of the Secretary of War.

There are a large number of these cases. They are also given in this document. I want to call attention, however, to a few of them. Perhaps the most important act—the one which blazed the way for this class of legislation—was that authorizing a corporation to build a dam and lock at Hales Bar, just below the city of Chattanooga. Under it the grantee was to purchase the necessary lands and deed the same to the United States; also to construct a lock and dam and give them to the United States when completed free of all cost, except expenses connected with the preparation of plans, superintendence, cost of lock gates, and so forth; and to furnish the United States free electric current for lighting and operating locks, the grantee to have the use of the water power for 99 years. That authority was granted something more than 8 years ago; and the condition, as I can recall myself, would have been extended to the construction of the lock gates and to the completed lock and dam, except for the fact that the then Chief of Engineers thought it best that the Government itself should make the plans for the lock gates, and purchase them. Under that provision the company has been going ahead; and while there have been unusual delays, due to high water and other causes, the construction, as I understand, is nearly completed.

Another case of the same kind is that of the Mississippi River at the Des Moines Rapids. There the grantee was required to build a lock and dry dock and appurtenant works, owership of them to be vested in the United States, the grantee to provide a suitable power plant for lighting and operating the lock, dry dock and appurtenances, and also to provide fishways.

The Cumberland River and tributaries is another case which I wish to cite. The Cumberland River Improvement Co., under an act of March 3, 1905, accepted a franchise under which the United States may assume the possession, care, operation, maintenance, and management of the lock or locks constructed by the corporation, but without in any way impairing the right or ownership of the water power and dams created by the corporation. There the conditions were a little less severe.

Then there is one in the Coosa River, Ala., at Lock 4, which certainly must have been consented to by the Senator from Alabama. In that case the dam was to be the property of the United States, free of charge; the grantee to have water-power rights for 50 years; the United States to have the right to construct a lock, and to have free electric current for operating and lighting; the grantee to raise the height of the dam and to stop leaks. Beginning in 1925, the grantee is required to pay to the United States $1 per 10-hour horsepower per year, with an increase if the natural flowage is increased by storage reservoirs.

Why, along through a stretch of years, through numerous river and harbor acts and other acts independent of river and harbor legislation, this principle of imposing conditions or imposing charges has been followed by the Federal Government, and there has been no question raised upon it in any court, so far as I know, to this day. The Muskingum River, the Green River, the Barren River, the Cumberland, the Coosa, the Tennessee, the great Mississippi itself, all have structures in which this rule has been followed.

Let me repeat again briefly, is there any difference between a condition which imposes upon the company the enormous expense of building the structures, building the cofferdams, and taking all the risks and uncertainties of the enterprise and one which provides in effect that when they are completed, after making due allowance for profits, for deterioration, and for the charges to consumers which are controlled by the State, the Government may, if there is a profit, impose certain charges for the improvement of the river in which that structure is located? The imposition of charges and the conditions requiring locks and dams to be constructed both rest on precisely the same principle, the fact that the Government, having the paramount right there, being responsible for providing navigation, may foster that navigation by any proper means of this nature.

Mr. THOMAS. May I ask the Senator a question?

Mr. BURTON. Certainly.

Mr. THOMAS. Suppose that instead of making a contract under the law now contemplated, the Government should assume to utilize the surplus power by constructing a power plant of its own and then selling power to consumers; could it do that?

Mr. BURTON. It might under some circumstances. Suppose it has provided an electrical plant at a lock and has a surplus of power to dispose of.

Mr. THOMAS. The Senator thinks the Government could do that?

Mr. BURTON. It would not naturally do it, because then it would be engaging in a line of business. But the surplus power belongs to the State or to the Government which creates the

main work. That is exactly what they are doing in these cases of the Muskingum and the Barren and other rivers. At Sault Ste. Marie it is provided that when that improvement is made——

Mr. THOMAS. The United States Government is constructing a plant of its own for the purpose of manufacturing or generating current and selling it.

Mr. BURTON. That is a question of policy, whether it will do it or not.

Mr. THOMAS. Simply a question of policy? Then let me ask whether the State would have any authority whatever to impose limitations upon the charges that the Government could make?

Mr. BURTON. That is a novel question. I am frank to say I had not thought of it before. I question whether it could. That is an ingenious question, I may say, and such a one as I anticipated the Senator was going to ask when he rose—whether the charges for power, which in the case of private corporations are fixed and uniform, could be imposed or compelled if the United States furnished the power. I am inclined to think they could not, but I do not feel quite ready to answer that question. At any rate, it does not arise in any case we have.

Mr. THOMAS. No; but we are considering the extent to which a given power may go if it exists at all. If the State has no power whatever, or only a limited power, if you please, to impose conditions upon the cost or charge of the General Government to the consumer and yet can impose those conditions upon all private concerns engaged in competition with it, may not the Government, by virtue of its freedom from all of those limitations, practically control the market first by underselling and afterwards by charging what the traffic will bear?

Mr. BURTON. In those things we have to rely ultimately on the wisdom of Congress. It is the thought of many that Congress does foolish things, but it is not probable that any situation would ever be created where any friction of that kind or any such troublesome question could exist. But the charge for transformed power created by the dam is the same in principle as the charge for the power that flows by the dam. We are now charging for the use of surplus water and fixing the rates. When that is transmuted into hydroelectrical power it would seem that the same principle would apply.

It is maintained—and a great deal of stress is laid upon this in the minority report—that something is confiscated by this act which belongs to the States. I think I can show the utter fallacy of that idea, Mr. President.

In the first place, I want to call attention to the difference between the laws of the older States and the laws of the newer or mountain States. We have certain rules and regulations, established by the courts and by statutes, in the Eastern States. The riparian owner has certain rights. The right of a riparian owner in the flow of the water is that he is entitled to have the stream remain in place and flow as nature directs, and to make such use of the flowing water as he can make without materially interfering with the equal rights of the owners above and below him on the stream. The boundaries of riparian lands are fixed according to three different rules. In some States, and Connecticut is one of them, the riparian owns to the high-water mark. In other States he owns to the low-water mark. In others, still, he owns to the center or thread of the stream. In the far Western States, however, the water belongs to the State or to the public, and is under its control.

In the State of Oregon, as I understand the law of prior appropriation which prevails in that State, the State may grant the privilege to a person who wishes to use water for a recognized beneficial purpose to go right in front of a man's farm and, upon payment of the proper compensation, put in his dam and equipment for the use or diversion of the water. When that is done the use of the water belongs to him under grant from the State. He is not compelled to recognize any riparian right—certainly none in the flow of the water.

It will appear from this that there is a very wide difference between these States and the State of Connecticut, in which no such rights are involved. I should be less than frank if I should not say to the Senate that I also believe in proper restrictions and conditions in case of Federal grants in the Western States; that is, where navigable streams or public lands are involved. But the two cases are very widely distinct.

What is the law in Connecticut? The State is said to own the bed of the stream. The riparian owner has certain rights. He can build out to the high-water mark, and he has the right of access to the stream, for his stock to drink, say. He can build out a wharf into the stream, so that he may utilize navigation facilities. Then, above all, is the paramount right of the Federal Government in the exercise of control over navigation.

What is confiscated here? First, the State of Connecticut by a grant to this company in 1824, confirmed in 1909, and by intermediate acts gave its rights to the grantee company, the Connecticut River Co. Those rights, in their most exaggerated form, are shadowy in their nature. What does the ownership of the bed of the stream mean to the State? It does not mean that you can authorize a person to go out there and build a blacksmith shop. It does not mean that you can authorize a construction out there as could a private owner on his own land. Indeed, in the very State of Connecticut the right of removing gravel from the bed of a stream by the State or under its authority without compensation to the riparian owner was denied.

In the bridge case to which I briefly referred in replying to a question of the Senator from Iowa, a railroad company desired to build a bridge from the mainland of New Jersey to Staten Island. The State of New Jersey came in and said: "We own the bed of that stream. We have passed a statute that no bridges shall be built across the Kill von Kull." The corporation, which was a private company, had been granted the right to build a bridge by the Federal Government. Justice Bradley—this is not a decision of the Supreme Court, but it is a decision by him on a circuit—decided that the right of the Federal Government was paramount; that the State of New Jersey could not stand in the way of the construction of that bridge. He decided, further, that the State of New Jersey owned the land under the river for the public; that it had no other ownership of it, and hence the railroad company could build its piers on the submerged land which nominally belonged to the State of New Jersey without asking leave. The builders of the bridge were not compelled to condemn the land in the bed of the stream. So, when we say the bed of the stream belongs to a State, what do we mean by it? We do not mean that it has a fee-simple title. We do not mean that it can be alienated or parceled out. We mean that the State owns it as a trust for the public use; not merely for the use of the State, but for all such uses as may be considered public in their nature.

This right, whatever it may be, of the State is not taken way from it by this bill. It did not amount to much, anyway; and what the State did have it has granted to this company under the charter authorizing it to improve the Connecticut River.

The riparian owner has cerain interests there. How about him? The bill provides with the most sedulous care that every right of the riparian owner—flowage, occupancy, everything—shall be acquired by this company before it can go ahead. It is made an absolute condition that they shall acquire all the abutting or riparian property, and this company is the riparian owner of a large share of it already. So there is not any confiscation there.

Now comes the Federal Government and says: "The Connecticut is a navigable stream. There are great communities above there awaiting to have access to the water that would become shippers of freight on a very large scale. We want that river improved. We do not think it is worth while to improve it independently as a problem of navigation; but if there can be proper compensation, not to the United States"—do not indulge in that delusion—"but to the public, it may be done." Everything that is done for navigation, whether it be the building of a dam or a lock or whatever it may be, or whether it be an amount paid annually in the way of a toll, is for the benefit of the public, for which the United States Government is a trustee. The Government says we will give this permission, provided certain things are done. For what? For the right to use the surplus water? Any right in the bed is gone; the right of the riparian owner is gone; the right of navigation remains. And that right of navigation is the paramount right. Flowing water is not tangible property; it is as free as the light of the sun or the air, you may say. Some talk about proprietary rights in the water power. What property is there in the form of water power until the dam is constructed and the appurtenant works are made? The water has been flowing down the Connecticut River ever since the days of Indian occupation, when the white settlers first went there, 280 years ago, practically unused. Are you going to stop progress? Are you going to stop the utilization of this water power? No; when that dam and that lock are constructed, then property is created. It is the utilization of that which has been running to waste from the very beginning of time.

Mr. NELSON. Who owns that property? Is it the United States or the company?

Mr. BURTON. Which property?

Mr. NELSON. Who creates that property when the dam on the Connecticut River is built? Whose property is that dam when it is built and ready for use?

Mr. BURTON. The bill states, in lines 22, 23, and 24, on page 4, after providing for the size of lock, and so forth:

And when the said lock and appurtenances shall have been completed the said corporation shall convey the same—

The lock belongs to the Government and the dam to the company—

And when the said lock and appurtenances shall have been completed the said corporation shall convey the same to the United States free of cost—

And so forth.

Mr. NELSON. Exactly. Those are the appurtenances of navigation. That is the property in the lock and gates, but the balance of the property, the dam and the dam power and the machinery and everything, belong to the company.

Now, I want to put one question to the Senator from Ohio, and I should like to hear him discuss it. Would not the effect of this legislation, if it was applied in every instance, be to put the control of every dam and water power under the War Department of the Government and absolutely divest the power of the States altogether?

Mr. BURTON. So far as any dams or locks have been built for the benefit of navigation, they are under the control of the War Department now.

Mr. NELSON. But I mean the water power created in the dam. I do not refer to the locks and gates; I mean the water power created by dams of this kind. Would not the effect of this principle be to put all the water power and the control of it and the compensation it shall pay all over the land under the Secretary of War, and give him the power to sell it and the power to regulate it and to say what should be paid for the use of that power by the company constructing the dam?

Mr. BURTON. Not necessarily so. There are many water powers, probably a majority that would not come under his control. I think much the greater portion of potential water power of the country would not come under the jurisdiction of the Secretary of War at all, because it will be developed in nonnavigable streams.

It is possible that there would be a qualified control over a portion of it by another Cabinet officer, the Secretary of the Interior, but I will come to that point later. We must have a degree of uniformity. The action of the Secretary of War, the action of the Secretary of the Interior, or any other Cabinet or executive officer is constantly under the control of Congress. If there is any danger of exaction or oppression or if his power is not properly applied, Congress at any session can absolutely change the law or take it away entirely.

Mr. NELSON. Will the Senator allow me a question right there?

Mr. BURTON. Certainly.

Mr. NELSON. Because of the fact that the Secretary of War is under the control of Congress, ought either Congress or the Secretary of War to destroy the rights of the States in this question?

Mr. BURTON. There is no right of the State to be destroyed in this case. The State organized this corporation and granted it such rights in the stream as it had power to grant. At considerable length I have shown what rights the States have in the beds of streams. This company must acquire the right of riparian proprietors. When you eliminate those rights there remains the right of navigation. I also tried to show that the property did not exist until you construct these works.

Mr. NELSON. Will the Senator allow me a question? In whom was this right to the water of the Connecticut River while Connecticut was a Colony, before it became one of the States of the Union? To whom did it belong?

Mr. BURTON. The right to its beneficial use belonged, I suppose, to King Charles the First, King Charles the Second, and later Kings of England.

Mr. NELSON. I mean before the Constitution of the United States was adopted or the independence of the Colonies?

Mr. BURTON. There were so many different situations that I do not like to express an opinion upon them, but I presume the Colony had rights similar to those now in the State.

Mr. NELSON. Now, will the Senator answer this question? Is it not true that that stream and the water in it was either the property of the State of Connecticut or of the riparian owner, or both combined, and that the Constitution of the United States gave the Federal Government only the right in that stream to the extent of navigation, and for no other purpose?

Mr. BURTON. It is a right, however, that was paramount and superior to all others, and to which the right to the bed of the stream and the riparian ownership, both of which have been acquired by the company which is the proposed licensee under this bill, are subordinate. A decision was rendered recently by the Supreme Court of Connecticut to the effect that where the course of a channel was modified, bringing it nearer to the shore and thereby interfering with an oyster bed, that, the change having been made under the authority of the Secretary of War and the Chief of Engineers, the party had no redress. That does not seem to show that the State of Connecticut has any right or desire to come in here with a complaint about the use of its waters by the Federal Government. On the contrary, probably every Senator here has received letters or telegrams from that locality most earnestly urging him to support this bill, even with such infirmities as it may have.

I shall now pass to another branch of the subject. The right to use the surplus water for power rests upon the fact that the development of power is an incident to the development of navigation. Every consideration of public policy demands that the two, power and navigation, should be developed together. An improvement which might not be profitable for navigation alone or for power alone can be made profitable if the two are combined. For the growth of the country it is essential that the two shall go together, and in the language of Judge Shiras, in his decision in One hundred and seventy-second United States, in such a situation "there can be no divided empire." Let us recognize the impossibility of having a divided ownership and control. Just as the Federal Government has the paramount jurisdiction over a river for purposes of navigation it has the paramount control over a lock and a dam in a navigable stream where it is erected for the sake of navigation.

Mr. O'GORMAN. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from New York?

Mr. BURTON. Certainly.

Mr. O'GORMAN. The Senator from Ohio just referred to an opinion by Mr. Justice Shiras, reported in One hundred and seventy-second United States Reports. I ask the Senator whether he is referring to the case of the Green Bay Co. *v.* the Patten Paper Co.?

Mr. BURTON. Yes; that is the case.

Mr. O'GORMAN. The Senator, of course, is quite aware that in that case the commerce clause of the Constitution was not under consideration. The rights asserted by the Government were based upon a grant and did not grow out of the constitutional provision.

Mr. BURTON. The Senator is in error about that. At any rate the principle——

Mr. O'GORMAN. I state it as a fact which can be confirmed by the decision itself.

Mr. BURTON. Let me read from the beginning the fundamental facts at issue. This case was first before the Supreme Court in One hundred and forty-second United States and again in One hundred and seventy-second United States. The commerce clause was involved. To go back to the very beginning I must refer to an act of Congress of 1846. I am reading from volume 142, United States Reports. Perhaps I am anticipating my argument a little, but I think I can now answer the Senator from New York. This is found in volume 142, United States Reports, page 255:

By an act approved August 8, 1846 (9 Stat., 83, c. 170), Congress granted certain lands to the State of Wisconsin upon its admission into the Union—

What for?

for the purpose of improving the navigation of the Fox and Wisconsin Rivers, the former of which is one of the navigable rivers of the State, having an average flow of 150,000 cubic feet per minute.

At a later time, subsequent to the decision in volume 142, a decision was reported in volume 172, after this property had been acquired by the Federal Government from the State of Wisconsin under an act of Congress. Now, what is the basis for the action of the Federal Government in the premises? In the first place, under the Constitution Congress would have control over interstate and foreign commerce. It has control in that connection over the agencies which facilitate commerce, which make possible intercourse between the States by the movement of freight. In that development it may create agencies for traffic, for carrying freight from localities in one State to those in another.

The next point is that in furtherance of this policy it has engaged on a large scale in the improvement of rivers for navigation. In some cases the rivers flow through a level country, and in others through a broken or mountainous country. In the latter case slack-water navigation is necessary, which can be obtained only by the construction of locks and dams. In these cases water power is incidentally created. In one case there is a river that flows through a perfectly level country which can be improved with the utmost ease at a trivial expense; then in another section of the country there is a stream flowing through a mountainous area with a great descent between its

source and its mouth. The second class of rivers possess potential water power. Is it fair to the Federal Government and the people of the United States to put those two cases on just the same footing, to expend millions in one case against tens of thousands in the other, when connected with this expenditure of millions it is possible to create power which is of inestimable value?

Mr. O'GORMAN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from New York?

Mr. BURTON. Yes; but I prefer to proceed with my argument for a little time.

Mr. O'GORMAN. I have no desire to interrupt, except that it might be desirable to have the fact accurately stated as to whether the commerce clause of the Constitution was involved in the case in question or whether the controversy grew out of a grant, as I asserted. I repeat, by reference to the decision which I hold in my hand, there is no single allusion to the constitutional provision, but, on the contrary, the opinion distinctly states that the controversy grew out of the grant, as it appears on page 62 of the One hundred and seventy-second Supreme Court Reports, as follows:

By an act approved March 23, 1871, by the Legislature of Wisconsin the directors of the Green Bay & Mississippi Canal Co. were authorized to sell and dispose of the rights and property of said company to the United States, and to cause to be made and executed all papers and writings necessary thereto as contemplated in the act of Congress.

And the subsequent controversy grew out of the rights secured by that grant; and not in the remotest way was the commerce clause of the Constitution involved in that case.

Mr. BURTON. May I ask the Senator from New York a *question*?

Mr. O'GORMAN. With pleasure.

Mr. BURTON. How can you authorize a dam in a navigable stream or legislate concerning a dam in a navigable stream without involving the interstate-commerce power under the Constitution?

Mr. O'GORMAN. I am asserting with respect to this particular case that that question was not involved.

Mr. BURTON. But how can you get rid of it?

Mr. O'GORMAN. The Senator cited the case, and I am calling his attention to the fact that the Supreme Court at no time in the case alluded to the commerce clause of the Constitution.

Mr. BURTON. That makes no difference; they took that for granted. What right would the Government of the United States have to improve a stream except for the purposes of navigation?

Mr. O'GORMAN. By a right which is contended for by the minority, or, rather, what appears to be now the majority of the Senator's own committee, namely, the Legislature of the State of Wisconsin, acting in its sovereign right, authorized a sale by one of its corporations of this franchise to the Federal Government, and among the rights secured by the franchise given by the State was the right to erect dams in one of the rivers of the State.

Mr. BURTON. For what purpose—for navigation?

Mr. O'GORMAN. Undoubtedly.

Mr. BURTON. How can you avoid the jurisdiction which belongs to Congress? Does the Senator from New York maintain for a minute that the Government of the United States could purchase rights along a waterway merely for the sake of the water power? What did all this transaction mean? Was the Government doing a vain thing?

Mr. O'GORMAN. I am glad to have the Senator from Ohio make the concession now that the Government has no right to engage in the purchase and sale and traffic of water power.

Mr. BURTON. As an independent proposition it does not have the power.

Mr. O'GORMAN. I assume that in the pending bill which the Senator is advocating the contrary principle is attempted to be recognized.

Mr. BURTON. Oh, not by any means. If you read the bill you can come to no other conclusion than that the object is navigation. The other is coordinate with it and incidental to it. There is no doubt of that.

The position taken by the Senator from New York would lead to this, that in a case in which there was a grant of land, a contract, as it were, made with the newly admitted State of Wisconsin for the express purpose of facilitating navigation, when statutes were passed for the development of navigation, when permission was given to build dams to facilitate navigation, when after the State had failed in its control and it was turned over to the Federal Government and the Federal Government appropriated millions for its improvement for purposes of navigation, the interstate clause of the Constitution was not involved at all. Certainly whether the court mentioned the fact or not they took it as elementary. It is not necessary to state, when you are dealing with a navigation problem, "We base our powers on the interstate-commerce clause." It was too well understood by everyone who was connected with it for that to be done. Based upon the commerce clause are, first, the control over interstate commerce; second, the right to provide the agencies for interstate commerce; and, third, in providing those agencies, the improvement of navigable streams, which has been done on a large scale. The Federal Government has a right to utilize those waters which it controls for the purposes of navigation in such a way as to subserve the public interest. The right to dispose of the surplus water for power purposes has been repeatedly maintained by decisions of the Federal and State courts. (See Kaukauna Water Power Co. *v.* Green Bay & Mississippi Canal, 142 U. S., p. 254.)

I fear the Senate is possibly a little weary, and I will not read at great length from these cases, as I had intended to.

Mr. O'GORMAN. Mr. President——

The PRESIDING OFFICER. Will the Senator from Ohio yield to the Senator from New York?

Mr. BURTON. Certainly.

Mr. O'GORMAN. Just for a brief interruption by way of elucidating perhaps the principle involved in this controversy. In the Kaukauna Co. *v.* Green Bay (142 U. S.), just referred to by the Senator from Ohio, the commerce clause of the Constitution was not involved. That case involved a dispute between the State of Wisconsin and the riparian owner, and the rights which the court recognized in the State of Wisconsin have been regarded by some as indicating the rights that ought to be vested in the Federal Government, while the rights recognized in the State of Wisconsin were rights pertinent to the sovereignty of the State.

Mr. BURTON. It is expressly stated in this case that the State of Wisconsin could not authorize the appropriation of money for the creation of water power. They had no stronger rights than the United States in the improvement. A certain amount of fog sometimes arises in a study of this case because of its close association with the transactions of the State, but it is decided not on the particular circumstances but on the general facts. If the Senator from New York will allow me, and the Senate will bear with me, I want to read from the decision in this case somewhat at length.

It has been suggested, Mr. President, that the Senator from California [Mr. PERKINS] desires to call up the fortifications appropriation bill, and with the consent of the Senate I will suspend my argument. But I should like to ask if any notice has been given for to-morrow.

The PRESIDING OFFICER (Mr. KENYON in the chair). The Senator from Kentucky [Mr. PAYNTER] has given notice that he would address the Senate to-morrow on Senate bill 4043, to prohibit interstate commerce in intoxicating liquors in certain cases.

Mr. BURTON. Then, on the conclusion of the remarks of the Senator from Kentucky, I will again address the Senate.

Mr. CLARK of Wyoming. Will the Senator from California yield to me just a moment?

Mr. PERKINS. Certainly.

Mr. CLARK of Wyoming. I made an inquiry near the beginning of the remarks of the Senator from Ohio as to whether he knew of an agreement that had been arrived at between the Secretary of War and the Connecticut River Co. with reference to the subject matter of this bill. The reply was that he knew of none. I am definitely informed that such an agreement has been arrived at; that the terms of the agreement have been discussed and have been agreed to; and that the division of the profits arising from this water power as between the company and the Government of the United States has been settled upon.

I send to the Secretary's desk a resolution upon this subject seeking for information, for which resolution I ask immediate consideration in order that we may have the proposed contract, if such a contract exists, to consider in connection with the bill.

The PRESIDING OFFICER. The Secretary will read the resolution.

The resolution (S. Res. 450) was read, considered by unanimous consent, and agreed to, as follows:

Resolved, That the Secretary of War be directed to furnish to the Senate a copy of the contract or agreement proposed to be entered into by and with the Connecticut River Co. with reference to a dam across the Connecticut River, and the generation of power in connection therewith, as contemplated under the proposed terms of S. 8033, being a bill now pending in the Senate of the United States entitled "A bill to authorize the Connecticut River Co. to relocate and construct a dam across the Connecticut River above the village of Windsor Locks, in the State of Connecticut."

FORTIFICATIONS APPROPRIATION BILL.

Mr. PERKINS. I move that the Senate proceed to the consideration of House bill 28186, known as the fortifications appropriation bill.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 28186) mak-

ing appropriations for fortifications and other works of defense, for the armament thereof, for the procurement of heavy ordnance for trial and service, and for other purposes, which had been reported from the Committee on Appropriations with an amendment.

Mr. PERKINS. I ask that the formal reading of the bill be dispensed with, that the bill be read for amendment, and that the amendment of the committee be acted upon when it is reached.

The PRESIDENT pro tempore. The Senator from California asks that the formal reading of the bill be dispensed with and that the bill be read for action on the committee amendment. Is there objection? Without objection, it is so ordered.

The Secretary proceeded to read the bill.

The amendment of the committee was, on page 2, after line 12, to insert:

Hereafter estimates shall not be submitted to Congress for appropriations for construction of gun and mortar batteries, modernizing older emplacements, and other construction under the Engineer Department, in connection with fortifications, until after plans and estimates of cost shall have been prepared therefor.

The amendment was agreed to.

The reading of the bill was concluded.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

MISSOURI RIVER BRIDGE IN NORTH DAKOTA.

The bill (H. R. 27879) providing authority for the Northern Pacific Railway Co. to construct a bridge across the Missouri River in section 36, township 134 north, range 79 west, in the State of North Dakota, was read twice by its title.

Mr. NELSON. I ask unanimous consent for the present consideration of that bill. It is identical with a Senate bill which has already been passed.

The PRESIDENT pro tempore. The Senator from Minnesota asks unanimous consent for the present consideration of the bill. Is there objection?

Mr. SMOOT. The Senator from Minnesota desires that it shall be passed in lieu of a similar Senate bill?

Mr. NELSON. I do. If the House bill shall pass, I shall move the indefinite postponement of the Senate bill.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

Mr. NELSON. I enter a motion to reconsider the vote by which the bill (S. 7855) to authorize the Northern Pacific Railway Co. to construct a bridge across the Missouri River in section 36, township 134 north, range 79 west, in the State of North Dakota, was passed, and I ask that the Secretary be directed to request the return of the bill from the House of Representatives.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. GALLINGER. I move that the Senate adjourn.

The motion was agreed to; and (at 4 o'clock and 13 minutes p. m.) the Senate adjourned until to-morrow, Thursday, February 6, 1913, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *February 5, 1913.*

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

Father in heaven, stir the divinity within us that it may dominate our lives and bring us into a closer relationship with Thee and our fellow men in the furtherance of every good work, that our names may be written in the Book of Life and our souls filled with the peace which passeth understanding. In Jesus Christ our Lord. Amen

The Journal of the proceedings of yesterday was read and approved.

CALENDAR WEDNESDAY.

The SPEAKER. This is Calendar Wednesday.

Mr. FITZGERALD. I move to dispense with the business in order under the rule to-day.

The SPEAKER. The gentleman from New York moves to dispense with the business of Calendar Wednesday to-day; and on that motion each side has five minutes under the rule.

Mr. MANN. I make the point of order that there is no quorum present.

Mr. FITZGERALD. I move a call of the House.

The SPEAKER. Evidently there is no quorum present. The gentleman from New York [Mr. FITZGERALD] moves a call of the House.

The motion was agreed to.

The SPEAKER. The Doorkeeper will close the doors, the Sergeant at Arms will notify absentees, and the Clerk will call the roll.

The Clerk proceeded to call the roll, when the following Members failed to answer to their names:

Aiken, S. C.	Goldfogle	Lawrence	Riordan
Ainey	Goodwin, Ark.	Levy	Roberts, Nev.
Ames	Green, Iowa	Lindsay	Scully
Andrus	Greene, Mass.	Littleton	Simmons
Ansberry	Gudger	Longworth	Smith, N. Y.
Barchfeld	Guernsey	McCall	Stack
Boehne	Hamill	Madden	Stanley
Bradley	Hammond	Maher	Stedman
Broussard	Harris	Martin, Colo.	Stevens, Minn.
Burgess	Harrison, N. Y.	Matthews	Taylor, Ala.
Brynes, S. C.	Hart	Merritt	Taylor, Ohio.
Callaway	Hartman	Moon, Pa.	Tilson
Conry	Haugen	Moore, Tex.	Townsend
Cravens	Hay	Morgan, Okla.	Turnbull
Davidson	Helgesen	Olmsted	Tuttle
De Forest	Higgins	O'Shaunessy	Volstead
Dickson, Miss.	Hinds	Palmer	Vreeland
Doremus	James	Peters	Warburton
Driscoll, D. A.	Kennedy	Porter	Weeks
Finley	Kindred	Pujo	Whitacre
Fornes	Kitchin	Rainey	Wilder
Gardner, N. J.	Konig	Randell, Tex.	Wilson, Ill.
George	Korbly	Ransdell, La.	Wilson, N. Y.
Gill	Lafean	Reyburn	Wood, N. J.
Glass	Lafferty	Richardson	

The SPEAKER. On this call 286 Members have answered to their names.

Mr. FITZGERALD and Mr. MANN moved to dispense with further proceedings under the call.

The motion was agreed to.

The SPEAKER. The gentleman from New York is entitled to five minutes on his motion to dispense with Calendar Wednesday.

Mr. FITZGERALD. Mr. Speaker, I made the motion to dispense with Calendar Wednesday because of the condition of the public business awaiting to be disposed of by the House. There are still to be considered seven appropriation bills—the agricultural, diplomatic and consular, Military Academy, naval, pension, sundry civil, and general deficiency.

In addition to that, the District of Columbia appropriation bill is now under consideration. From now until the 3d of March, inclusive, there are 27 days, and 4 of those days are Sundays. There are two Wednesdays—to-day and the next Wednesday. Next Wednesday is set aside by order of the two Houses for the count of the electoral votes. There are four Fridays. Thus far the House by its vote has refused to set aside special business in order on Friday and consider general public business. There are some bills of such a peculiar character that, in my opinion, the House when put in the position of choosing between appropriation bills and that business is likely to refuse to consider appropriation bills.

There are two Mondays upon which business is in order from the District Committee, and I assume that at least one day, or a part of a day, will be required by that committee. There are two Mondays set aside for business on the Unanimous Consent Calendar.

So that, even if the four Fridays set aside for business on the Private Calendar be devoted to appropriation bills, there remain but 16 days until the 3d of March which are available for public business.

It must be remembered that not only must the appropriation bills be passed within 16 days, but they must be sent to the Senate in time to enable the Senate to consider them. Moreover, conference reports will take up considerable time during the remaining days. Unless the House desires some of these appropriation bills to fail and to go over into the special session of Congress, it is necessary to set aside these days for particular classes of business in order that the public business may be transacted.

Mr. MANN. Did the gentleman from New York take into consideration the fact that Saturday, the 15th of this month, the House will be invited to participate in the memorial to the late Vice President, Mr. Sherman?

Mr. FITZGERALD. I had that on the list. Mr. Speaker, the 15th of February has been set aside by general order for memorial services on the life and character of the late Vice President of the United States, and the House is invited and I assume will attend the ceremony in the Senate.

Mr. Speaker, it is rarely that any of these appropriation bills can be passed in two days. Neither the agricultural bill, the naval, nor the sundry civil bill can be passed inside of four or five days, driving 12 and 14 hours a day. The responsibility for